

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(1) INTRODUCTION/501. Names of the office.

## **MAGISTRATES (**

### **1. THE OFFICE AND JURISDICTION OF MAGISTRATES**

#### **(1) INTRODUCTION**

##### **501. Names of the office.**

The name 'justice of the peace' was first given to the office of magistrate by the Justices of the Peace Act 1361<sup>1</sup>. 'Magistrate' is the common denomination under which are included all those who are entrusted, whether by commission or appointment, or by virtue of their office, with the conservation of the peace and the hearing and determination of charges in respect of offences against it.

For the purposes of the Justices of the Peace Act 1997, 'magistrate' means: (1) in relation to a commission area<sup>2</sup>, a justice of the peace for the commission area, other than a justice whose name is for the time being entered in the supplemental list<sup>3</sup>; (2) in relation to a part of a commission area, a person who, in accordance with head (1) above, is a magistrate for that area and ordinarily acts in and for that part of it<sup>4</sup>; and (3) in relation to a magistrates' courts committee area<sup>5</sup>, a person who, in accordance with heads (1) and (2) above, is a magistrate for that area or any part of that area<sup>6</sup>.

The Magistrates' Courts Act 1980, despite its title and its use of the term 'magistrates' court', still uses the description 'justice of the peace' to describe the holder of the office<sup>7</sup>.

1 The Justices of the Peace Act 1361 was entitled 'What sort of persons shall be Justices of Peace; and what authority they shall have'. The short title was given by the Statute Law Revision Act 1948 s 5, Sch 2.

2 As to commission areas see PARA 507 post.

3 Justices of the Peace Act 1997 s 72(1)(a). As to the entry of a justice's name on the supplemental list see PARA 519 post.

4 Ibid s 72(1)(b).

5 As to magistrates' courts committee areas see PARA 612 et seq post.

6 Justices of the Peace Act 1997 s 72(1)(c).

7 See the Magistrates' Courts Act 1980 s 148(1); and PARA 583 post. As to magistrates' courts generally see PARA 583 et seq post.

Except as stated in s 155(2)-(5) (as amended), and except so far as relates to the interpretation or commencement of the provisions mentioned in s 155(2)-(5) (as amended), the Magistrates' Courts Act 1980 extends to England and Wales only: s 155(1), (6). 'England' means, subject to any alteration of boundaries under the Local Government Act 1972 Pt IV (ss 46-78) (as amended), the area consisting of the counties established by s 1 (see LOCAL GOVERNMENT vol 69 (2009) PARA 24), Greater London and the Isles of Scilly: Interpretation Act 1978 s 5, Sch 1. For the purposes of the Magistrates' Courts Act 1980 the Isles of Scilly form part of the county of Cornwall: s 149. 'Wales' means the combined area of the counties which were created by the Local Government Act 1972 s 20 (as substituted) (see LOCAL GOVERNMENT vol 69 (2009) PARA 37), but subject to any alteration made under s 73 (as amended) (consequential alteration of boundary following alteration of

watercourse) (see LOCAL GOVERNMENT vol 69 (2009) PARA 90): Interpretation Act 1978 Sch 1 (definition substituted by the Local Government (Wales) Act 1994 s 1(3), Sch 2 para 9).

## **UPDATE**

### **501 Names of the office**

TEXT AND NOTES 2-6--Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

NOTE 7--Magistrates' Courts Act 1980 s 149 repealed: 2003 Act Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(1) INTRODUCTION/502. Origins.

### **502. Origins.**

In ancient times the duty of conserving the peace lay primarily upon the holders of certain offices, some of which were held by royal appointment and some by election. Examples of the former were the Lord Chancellor<sup>1</sup>, the Lord Steward, the Lord Marshal, and the justices of the King's Bench, who had jurisdiction throughout the kingdom. Justices of the Common Pleas and barons of the Exchequer were conservators within the limits of their courts and justices of assize and gaol delivery within the limits of their commissions. Sheriffs<sup>2</sup> and coroners<sup>3</sup> were examples of elected officers who were peace conservators within their counties and constables<sup>4</sup> within their townships or hundreds. There were also persons elected by the general body of freeholders of each county to act as peace conservators for the county. Furthermore, there were conservators of the peace by prescription and by tenure of land<sup>5</sup>.

1 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 As to the office of sheriff see generally SHERIFFS vol 42 (Reissue) PARA 1101 et seq.

3 As to the office of coroner see generally CORONERS vol 9(2) (2006 Reissue) PARA 903 et seq.

4 As to the office of constable see generally POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

5 Lambard's Eirenarcha (1610 Edn) 12-17; 1 Bl Com (14th Edn) 349. For the offices whose holders are ex officio justices of the peace see PARA 509 post.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(1) INTRODUCTION/503. Development of conservators into justices of the peace.

### **503. Development of conservators into justices of the peace.**

The process by which the ancient keepers of the peace with executive functions were transformed into justices with judicial powers can be traced in the history of the fourteenth century<sup>1</sup>. In 1327 the King, who is 'by his office and dignity royal the principal conservator of the peace within his dominions'<sup>2</sup>, assumed the right of appointing all conservators<sup>3</sup>.

In 1344 it was enacted that 'two or three of the best of reputation in the counties shall be assigned keepers of the peace by the King's commission; and at what time need shall be, the

same, with other wise and learned in the law, shall be assigned by the King's commission to hear and determine felonies and trespasses done against the peace in the same counties, and to inflict punishment reasonably according to [law and reason, and] the manner of the deed'<sup>4</sup>.

1 The transformation of the Keepers of the Peace into Justices of the Peace, 1327-1380 (Transactions of the Royal Historical Society of 1929, 4th Series, Vol XII, p 19) by Bertram H Putnam and other authorities.

2 Lambard's Eirenarcha (1610 Edn) 12.

3 1 Edw 3 stat 2 c 16 (1326-7) (repealed).

4 18 Edw 3 stat 2 c 2 (1344) (repealed).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(1) INTRODUCTION/504. Assumption of appointment by the Crown.

#### **504. Assumption of appointment by the Crown.**

After the transformation of keepers of the peace into justices with judicial powers<sup>1</sup>, other statutes followed by which the number and authority of justices were regulated<sup>2</sup>. By the Jurisdiction in Liberties Act 1535<sup>3</sup> it was again enacted that no person or persons, of what estate, degree or condition soever they be, should have any power or authority to make justices of the peace, but that all such officers should be made by letters patent under the King's Great Seal in the name and by the authority of the King and his heirs<sup>4</sup>. The Act contained a saving for the County Palatine of Lancaster, where the right of appointment is vested in the Sovereign in right of the Duchy<sup>5</sup>. This right, which has thus been vested in the Crown, may not, without legislation to that end, be delegated to any other authority<sup>6</sup>.

1 See PARA 503 ante.

2 See the Justices of the Peace Act 1361 (amended by the Statute Law Revision Act 1948; and the Criminal Law Act 1967 s 10(2), Sch 3 Pt II); 12 Ric 2 c 10 (1388) (repealed); 14 Ric 2 c 11 (1390) (repealed); 5 Hen 4 c 10 (1403-4) (repealed).

3 27 Hen 8 c 24.

4 Jurisdiction in Liberties Act 1535 s 2 (repealed). See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 307.

5 Ibid s 4 (repealed). As to the Duchy and County Palatine of Lancaster see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 307; CROWN PROPERTY vol 12(1) (Reissue) PARA 300 et seq.

6 *Jones v Williams* (1825) 3 B & C 762 at 767 per Bayley J; *Arnold v Gaussen* (1853) 8 Exch 463.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(1) INTRODUCTION/505. Modern legislation.

#### **505. Modern legislation.**

At the beginning of the twentieth century the law concerning justices of the peace was derived from a number of statutes, some of them centuries old. The effect of legislation in the middle

years of that century was to simplify and consolidate this branch of the law and subsequently to reform it, notably by extending the powers of magistrates sitting in magistrates' courts<sup>1</sup>.

Further consolidation was effected in 1997 by the Justices of the Peace Act 1997. This Act governs the residence qualification of justices<sup>2</sup>, disqualification<sup>3</sup>, the size and chairmanship of benches<sup>4</sup>, the administration of magistrates' courts<sup>5</sup>, and the indemnification of justices out of local funds<sup>6</sup>. It also regulates the appointment<sup>7</sup> and instruction<sup>8</sup> of justices and the keeping of the supplemental list<sup>9</sup>. The 1997 Act also contains provisions relating to the appointment, retirement and superannuation of District Judges (Magistrates' Courts)<sup>10</sup>.

The Magistrates' Courts Act 1980 consolidated and revised the provisions as to the jurisdiction, practice and procedure of magistrates' courts<sup>11</sup> and is still the principal legislation on this subject along with the Magistrates' Courts Rules 1981<sup>12</sup>. In relation to youth courts<sup>13</sup> the provisions relating to the constitution, place of sitting and procedures of magistrates' courts<sup>14</sup> have effect subject to any provision contained in the rules made under the Magistrates' Courts Act 1980<sup>15</sup> or any enactment<sup>16</sup> regulating the constitution, place of sitting or procedure of youth courts<sup>17</sup>. There are special provisions in the Magistrates' Courts Act 1980 concerning the constitution and sittings of magistrates' courts when hearing family proceedings<sup>18</sup>.

The powers of magistrates' courts in criminal cases are derived mainly from the Criminal Justice Acts of 1948, 1961, 1967, 1972, 1982, 1988, 1991 and 1993, the Crime (Sentences) Act 1997 and the Crime and Disorder Act 1998, many provisions of which have since been repealed and re-enacted in the Powers of Criminal Courts (Sentencing) Act 2000 and the Criminal Justice and Court Services Act 2000<sup>19</sup>. The powers of magistrates to order costs in civil and criminal cases are derived from the Magistrates' Courts Act 1980 and the Prosecution of Offences Act 1985 respectively<sup>20</sup>. The Community Legal Service and the Criminal Defence Service established by the Access to Justice Act 1999<sup>21</sup> provide legal services in criminal and civil cases before magistrates.

1 As to magistrates' courts generally see PARA 583 et seq post.

2 As to the residence qualification see Justices of the Peace Act 1997 s 6 (as amended); and PARA 510 post.

3 As to disqualification see *ibid* ss 6, 66 (both as amended); and PARAS 510, 551 post.

4 As to the size and chairmanship of benches see *ibid* s 24 (as amended); the Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193; and PARAS 595-602 post.

5 As to the administration of magistrates' courts see the Justices of the Peace Act 1997 Pt III (ss 27-39B) (as amended), Pt IV (ss 40-50) (as amended).

6 As to indemnification of justices out of local funds see *ibid* Pt V (ss 51-54) (as amended); and PARA 571 post.

7 As to the appointment of justices of the peace see the Justices of the Peace Act 1997 s 5; and PARA 506 post.

8 As to the provision of training courses for justices see *ibid* s 64; and PARA 516 post.

9 As to the entry of a justice's name on the supplemental list see *ibid* s 7; and PARA 519 post.

10 As to District Judges (Magistrates' Courts) see PARA 573 et seq post.

11 The Indictable Offences Act 1848 (partially repealed), the Summary Jurisdiction Act 1848 (repealed), the Summary Jurisdiction Act 1879 (repealed), the Magistrates' Courts Act 1952 (repealed) and the Magistrates' Courts Act 1957 (repealed) are consolidated in the Magistrates' Courts Act 1980.

12 *Ie* the Magistrates' Courts Rules 1981, SI 1981/552 (as amended). As to jurisdiction and procedure see PARA 653 et seq post. The Magistrates' Courts Rules 1981, SI 1981/552 (as amended) are supplemented, in relation to England, by the Magistrates' Courts (Forms) Rules 1981, SI 1981/553 (as amended). See in relation to Wales the Magistrates' Courts (Welsh Forms) Rules 1986, SI 1986/1079.

13 Until 1 October 1992 'youth courts' were known as juvenile courts: see the Criminal Justice Act 1991 s 70; and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1263. As to youth courts generally see PARAS 608-611, 746-756 post.

14 For the meaning of 'magistrates' court' see PARA 583 post.

15 See the rules made under the Magistrates' Courts Act 1980 s 144 (as amended) (see PARA 588 post): s 150(1). As to the procedure before youth courts see the Magistrates' Courts (Children and Young Persons) Rules 1992, SI 1992/2071 (as amended); and PARAS 746-756 post.

16 'Enactment' includes an enactment contained in a local Act or in any order, regulation or other instrument having effect by virtue of an Act: Magistrates' Courts Act 1980 s 150(1). See in particular the Children and Young Persons Act 1933 s 45 (as amended), s 47 (as amended), Sch 2 (as amended); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARAS 1263-1264.

17 Magistrates' Courts Act 1980 s 152 (amended by virtue of the Criminal Justice Act 1991 s 70).

18 See the Magistrates' Courts Act 1980 ss 65-70 (as amended); and PARAS 591, 603 et seq, 739 et seq post.

19 See SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 22 et seq post.

20 See PARAS 767-771 post.

21 See the Access to Justice Act 1999 Pt I (ss 1-26) (as amended); and LEGAL AID vol 65 (2008) PARA 17 et seq.

## UPDATE

### 505 Modern legislation

TEXT AND NOTES 2-10--Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

NOTE 17--Magistrates' Courts Act 1980 s 152 further amended: 2003 Act Sch 8 para 251.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(2) APPOINTMENT AND QUALIFICATIONS/506. Appointment.

## (2) APPOINTMENT AND QUALIFICATIONS

### 506. Appointment.

Justices of the peace for any commission area<sup>1</sup>, other than District Judges (Magistrates' Courts)<sup>2</sup>, are appointed<sup>3</sup> on behalf and in the name of Her Majesty by the Lord Chancellor<sup>4</sup> by instrument<sup>5</sup>.

A copy of the instrument appointing or removing a justice of the peace in any commission area is transmitted to the keeper of the rolls<sup>6</sup> for that area for enrolment in the records of the justices for the area<sup>7</sup>. The office of the Clerk of the Crown in Chancery<sup>8</sup> keeps a record of all persons for the time being holding office as justices of the peace by virtue of appointments made under these provisions together with the instruments of appointment or removal<sup>9</sup>.

In making these appointments, the Lord Chancellor and the Chancellor of the Duchy of Lancaster receive advice from advisory committees<sup>10</sup>, but the final responsibility rests with the Lord Chancellor or the Chancellor of the Duchy. The Lord Mayor and aldermen of the City of London may not be justices of the peace unless appointed by the Lord Chancellor in accordance with the Justices of the Peace Act 1997<sup>11</sup>.

- 1 As to commission areas see PARA 507 post.
- 2 Justices of the Peace Act 1997 s 5(2). As to the appointment and tenure of office of District Judges (Magistrates' Courts) see PARA 573 post.
- 3 As to the oaths of office see PARA 513 post.
- 4 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.
- 5 Justices of the Peace Act 1997 s 5(1). The Chancellor of the Duchy of Lancaster exercises this power in relation to a commission area which is wholly included within the counties of Greater Manchester and Merseyside and the retained county of Lancashire (ss 5(1), 26(1), (2)(a) (s 26 substituted by the Access to Justice Act 1999 s 76, Sch 10 paras 47, 50)), and the Lord Chancellor and the Chancellor of the Duchy of Lancaster acting jointly exercise this power in relation to a commission area which is partly included within the counties of Greater Manchester and Merseyside and the retained county of Lancashire (Justices of the Peace Act 1997 ss 5(1), 26(1), (2)(b) (s 26 as so substituted)). For this purpose, the retained county of Lancashire is that county as it stood immediately before 1 April 1995: s 26(1) (as so substituted). As to the Duchy and County Palatine of Lancaster see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 307; CROWN PROPERTY vol 12(1) (Reissue) PARA 300 et seq.
- 6 As to the keeper of the rolls see PARA 508 post.
- 7 Justices of the Peace Act 1997 s 25(2).
- 8 As to the Clerk of the Crown in Chancery see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 921.
- 9 Justices of the Peace Act 1997 s 25(4).
- 10 In England and Wales there are currently 94 advisory committees and 129 sub-committees. For the functions, organisation and structure of advisory committees see the *Lord Chancellor's Directions for Advisory Committees on Justices of the Peace* (July 1998) (the 'Purple Book') Section 2. The Lord Lieutenant is normally the chairman of a county committee. See the *Report of the Royal Commission on the Selection of Justices of the Peace* (Cd 5250) (1910), and the *Report of the Royal Commission on Justices of the Peace* (Cmd 7463) (1948).
- 11 Access to Justice Act 1999 s 76(1). As to the Lord Mayor and aldermen of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 44 et seq.

## UPDATE

### 506-516 Appointment and Qualifications

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

### 506 Appointment

TEXT AND NOTES 1-5--Lay justices are appointed for England and Wales by the Lord Chancellor by instrument on behalf and in the name of Her Majesty: Courts Act 2003 s 10(1). 'Lay justice' means a justice of the peace who is not a District Judge (Magistrates' Courts): s 9. See further Constitutional Reform Act 2005 s 85, Sch 14 Pt 2 (partly in force: SI 2006/1014); and COURTS.

The Lord Chief Justice must assign each lay justice to one or more local justice areas, and may change an assignment so as to assign the lay justice to a different local justice area or to different local justice areas: s 10(2) (amended by Constitutional Reform Act 2005 Sch 4 para 313(2)). Subject to the 2003 Act s 12 (supplemental list), every lay justice is, by virtue of his office, capable of acting as such in any local justice area (whether or not he is assigned to it); but he may do so only in accordance with arrangements made by Lord Chief Justice: s 10(3), (5) (s 10(3) amended by 2005 Act Sch 4 para 313(3)). Rules may make provision about the training courses to be

completed before a person may exercise functions as a lay justice in any proceedings or class of proceedings specified in the rules: 2003 Act s 10(4).

The Lord Chancellor must ensure that arrangements for the exercise, so far as affecting any local justice area, of functions under the Courts Act 2003 s 10(1) and (2) include arrangements for consulting persons appearing to him to have special knowledge of matters relevant to the exercise of those functions in relation to that area: s 10(2A) (added by Constitutional Reform Act 2005 s 106). The functions conferred on the Lord Chief Justice by the 2003 Act s 10(2) and (3) may be exercised only after consulting the Lord Chancellor: s 10(6) (added by 2005 Act Sch 4 para 313(4)). The Lord Chief Justice may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4)) to exercise his functions under the 2003 Act s 10(2) or (3): s 10(7) (as so added).

Rules made by the Lord Chief Justice may make provision about the training, development and appraisal of lay justices, and related matters: 2003 Act s 19 (amended by 2005 Act Sch 4 para 320). Before making rules for the purposes of the 2003 Act ss 10, 19, the Lord Chief Justice must consult the Lord Chancellor and the appropriate rule committees: see s 20 (amended by 2005 Act Sch 4 para 321).

As to rules made under these provisions see the Justices of the Peace (Training and Development Committee) Rules 2007, SI 2007/1609.

The Lord Chancellor and the Lord Chief Justice must take all reasonable and practicable steps to ensure that lay justices are kept informed on matters that affect them in the performance of their duties in a local justice area, and to ascertain their views on such matters: 2003 Act s 21(1) (amended by 2005 Act Sch 4 para 322(2), (3)). The Lord Chief Justice may nominate a judicial office holder (as defined in the 2005 Act s 109(4)) to exercise his functions under the 2003 Act s 21: s 21(2) (added by 2005 Act Sch 4 para 322(4)).

TEXT AND NOTES 7-9--1997 Act s 25 replaced by 2003 Act s 16 (amended by Constitutional Reform Act 2005 Sch 4 para 318).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(2) APPOINTMENT AND QUALIFICATIONS/507. Commission areas.

## **507. Commission areas.**

The commission of the peace is the authority under which justices exercise their jurisdiction. It is the commission which gives justices the ancient common law powers of conservators of the peace in addition to the statutory powers later conferred<sup>1</sup>. England<sup>2</sup> and Wales<sup>3</sup> are divided into areas for each of which there is a commission of the peace<sup>4</sup>. The areas are as specified by the Lord Chancellor<sup>5</sup> by order made by statutory instrument<sup>6</sup>, but a commission area may not consist of an area partly within and partly outside Greater London<sup>7</sup>. An area for which there is a commission of the peace is known as a commission area<sup>8</sup>. The commission of the peace for any commission area is a commission under the Great Seal addressed generally, and not by name, to all such persons as may from time to time hold office as justices of the peace for the commission area<sup>9</sup>. A new commission of the peace may be issued by the Crown at any time, but it is no longer necessary upon a demise of the Crown<sup>10</sup>.

A magistrates' courts committee<sup>11</sup> may at any time submit to the Lord Chancellor written<sup>12</sup> proposals for an alteration of any commission area<sup>13</sup> which includes the whole or any part of its area<sup>14</sup>. Before submitting such proposals the magistrates' courts committee must consult<sup>15</sup>: (1)

the magistrates<sup>16</sup> for its area or that of any affected magistrates' courts committee<sup>17</sup>; and (2) any affected magistrates' courts committee<sup>18</sup>. Before making an order<sup>19</sup> which makes an alteration of a commission area, other than an order which implements proposals submitted to him, the Lord Chancellor must consult<sup>20</sup>: (a) the magistrates for the area of any affected magistrates' courts committee<sup>21</sup>; and (b) any affected magistrates' courts committee<sup>22</sup>. For this purpose<sup>23</sup> an order is taken to implement proposals if it implements them without changes or any departures from the proposals do not, in the opinion of the Lord Chancellor, effect important changes in the proposals<sup>24</sup>. An order which makes an alteration of a commission area may contain such consequential and transitional provisions as appear to the Lord Chancellor to be necessary or expedient<sup>25</sup>, and a statutory instrument containing an order which makes an alteration of a commission area is subject to annulment in pursuance of a resolution of either House of Parliament<sup>26</sup>.

1 Lambard's Eirenarcha (1610 Edn) 45.

2 For the meaning of 'England' see PARA 501 note 7 ante.

3 For the meaning of 'Wales' see PARA 501 note 7 ante.

4 Justices of the Peace Act 1997 s 1(1) (s 1 substituted by the Access to Justice Act 1999 s 74(1)).

5 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

6 As to the commission areas for England and Wales see the Justices of the Peace (Commission Areas) Order 1999, SI 1999/3010 (amended by SI 2001/696; and SI 2001/2530).

7 Justices of the Peace Act 1997 s 1(2) (as substituted: see note 4 supra). The area comprising the areas of the London boroughs, the City of London and the Inner and Middle Temples constitutes the administrative area known as Greater London: London Government Act 1963 s 2(1); and see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

8 Justices of the Peace Act 1997 s 1(3) (as substituted: see note 4 supra).

9 Ibid s 3. For the form of commission see the Crown Office (Forms and Proclamations Rules) Order 1992, SI 1992/1730, Schedule Pt II Forms A-D (amended by SI 1996/276; SI 1996/739; and SI 2000/3064). The original form of the commission was revised in 1590 and 1878, and may be found in 3 Burn's Justice of the Peace (1845 Edn) 988. Prior to local government reorganisation in 1974 there was a distinction in the form of commissions between county and borough justices. For the purposes of commissions of the peace and the law relating to justices of the peace, magistrates' courts, the custos rotulorum, lieutenants, sheriffs and matters concerned with any of those matters, the new counties created in the reorganisation were substituted for counties of any other description: Local Government Act 1972 s 216(1). See further LOCAL GOVERNMENT vol 69 (2009) PARA 115. For the meaning of 'magistrates' court' see PARA 583 post.

10 See the Demise of the Crown Act 1901 s 1(1); the Home Office Circular 25/52; and CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 15.

11 As to magistrates' courts committees see PARA 612 et seq post.

12 Expressions referring to writing are, unless the contrary intention appears, to be construed as including typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form: see the Interpretation Act 1978 s 5, Sch 1.

13 References to the alteration of a commission area include (as well as a change in the boundaries of the area): (1) the combination of the area with another commission area; and (2) the division of the area between two or more commission areas: Justices of the Peace Act 1997 s 32A(7) (s 32A added by the Access to Justice Act 1999 s 74(2)).

14 Justices of the Peace Act 1997 s 32A(1) (as added: see note 13 supra).

15 Ibid s 32A(2) (as added: see note 13 supra).

16 As to the meaning of 'magistrate' see PARA 501 ante.



17 Justices of the Peace Act 1997 s 32A(2)(a) (as added: see note 13 supra). A magistrates' courts committee is affected by proposals or a proposed order if the alteration proposed would affect any commission area which includes the whole or any part of its area: s 32A(8) (as so added).

18 Ibid s 32A(2)(b) (as added: see note 13 supra).

19 Ie under ibid s 1(2) (as substituted): see the text to notes 5-7 supra.

20 Ibid s 32A(3) (as added: see note 13 supra).

21 Ibid s 32A(3)(a) (as added: see note 13 supra).

22 Ibid s 32A(3)(b) (as added: see note 13 supra).

23 Ie for the purposes of ibid s 32A(3) (as added): see the text to notes 19-22 supra.

24 Ibid s 32A(4) (as added: see note 13 supra).

25 Ibid s 32A(5) (as added: see note 13 supra).

26 Ibid s 32A(6) (as added: see note 13 supra).

## **UPDATE**

### **506-516 Appointment and Qualifications**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

### **507 [Local justice] areas**

TEXT AND NOTES--Commission areas are replaced by local justice areas: see Courts Act 2003 s 8. 1997 Act replaced by 2003 Act s 7.

There is a commission of the peace for England and Wales, issued under the Great Seal, and addressed generally, and not by name, to all such persons as may from time to time hold office as justices of the peace for England and Wales: s 7.

England and Wales is to be divided into areas to be known as local justice areas: s 8(1). The areas are to be those specified by an order made by the Lord Chancellor: s 8(2). Each local justice area established by such order is to be known by such name as is specified in the order (but subject to s 8(4)): s 8(3). The Lord Chancellor may make orders altering local justice areas: s 8(4). 'Altering', in relation to a local justice area, includes (as well as changing its boundaries) (1) combining it with one or more other local justice areas, (2) dividing it between two or more other local justice areas, and (3) changing its name: s 8(5). Before making an order under s 8(4) in relation to a local justice area the Lord Chancellor must consult the justices of the peace assigned to the local justice area, any courts board whose area includes the local justice area or a part of the local justice area, and, unless the alteration consists only of a change of name, any local authorities whose area includes the local justice area or a part of the local justice area: s 8(6). Before making any order under s 8(2) or (4), the Lord Chancellor must consult the Lord Chief Justice: s 8(5A) (added by Constitutional Reform Act 2005 Sch 4 para 312(2)). The Lord Chief Justice may nominate a judicial office holder (as defined in s 109(4)) to exercise his functions under the 2003 Act s 8: s 8(8) (added by 2005 Act Sch 4 para 312(3)). As to the local justice areas see Local Justice Areas Order 2005, SI 2005/554 (amended by SI 2005/2949, SI 2006/1839, SI 2006/2315, SI 2007/2284, SI 2009/2080); Local Justice Areas (No 2) Order 2005, SI 2005/2949; Local Justice Areas (No 1) Order 2006, SI 2006/1839 (amended by SI 2007/2284); Local Justice Areas (No 2) Order 2006, SI 2006/2315 (amended by SI 2007/2284); Local Justice Areas Order 2007, SI 2007/2284; Local Justice Areas Order 2009, SI 2009/2080.

'Local authority' means any council of a county, a county borough, a London borough or a council of a district, the Common Council of the City of London, or a police authority established under the Police Act 1996 s 3 or the Metropolitan Police Authority: 2003 Act s 8(7).

NOTE 9--SI 1992/1730 Schedule Pt II Form A further amended, Form B revoked: SI 2005/617.

TEXT AND NOTES 13-26--The Lord Chancellor's functions under the 1997 Act s 32A (repealed with savings) are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(2) APPOINTMENT AND QUALIFICATIONS/508. Keeper of the rolls (*custos rotulorum*).

### **508. Keeper of the rolls (*custos rotulorum*).**

In any commission area<sup>1</sup> the Lord Chancellor<sup>2</sup> may designate a justice of the peace to be keeper of the rolls<sup>3</sup>. A copy of any instrument appointing or removing a justice of the peace in a commission area must be transmitted to the keeper of the rolls for that area and be enrolled in the records of the justices for the area<sup>4</sup>. The keeper of the rolls must be notified in such manner as the Lord Chancellor may direct<sup>5</sup> of any resignation or death of a justice so appointed, and must cause to be kept and from time to time rectified a record of those for the time being holding office by virtue of any such appointment<sup>6</sup>.

The keeper of the rolls has the titular custody of the records of the county<sup>7</sup>. Formerly he had custody of the records of quarter sessions, but with the abolition of that court all functions concerning the keeping of its non-judicial records were transferred to the local authorities to which those matters related<sup>8</sup>. Records relating to judicial matters were transferred to the custody of the Crown Court<sup>9</sup>.

1 As to commission areas see PARA 507 ante.

2 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 Justices of the Peace Act 1997 s 25(1) (amended by the Access to Justice Act 1999 s 106, Sch 15 Pt V). The Chancellor of the Duchy of Lancaster exercises this power in relation to a commission area which is wholly included within the counties of Greater Manchester and Merseyside and the retained county of Lancashire (Justices of the Peace Act 1997 s 25(1) (as so amended), s 26(1), (2)(a) (s 26 substituted by the Access to Justice Act 1999 s 76, Sch 10 paras 47, 50)), and the Lord Chancellor and the Chancellor of the Duchy of Lancaster acting jointly exercise this power in relation to a commission area which is partly included within the counties of Greater Manchester and Merseyside and the retained county of Lancashire (Justices of the Peace Act 1997 s 25(1) (as so amended), s 26(1), (2)(b) (as so substituted)). As to the Duchy and County Palatine of Lancaster see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 307; CROWN PROPERTY vol 12(1) (Reissue) PARA 300 et seq. As to the meaning of 'the retained county of Lancashire' see PARA 506 note 5 ante.

Apparently commissions of the peace were originally issued individually to the persons named. Later the custom developed of sending them to one magistrate who became known as the *custos rotulorum*. As the *custos* was first named in the commission, he naturally came to be regarded as the senior magistrate in the county. In practice the office is almost invariably united with that of lord lieutenant of the county. He once had the right to appoint the clerk of the peace (see the Great Seal Act 1688 ss 4, 5 (repealed)), but this office no longer exists.

4 Justices of the Peace Act 1997 s 25(2).

5 The Chancellor of the Duchy of Lancaster exercises this power in relation to a commission area which is wholly included within the counties of Greater Manchester and Merseyside and the retained county of Lancashire (ibid ss 25(2), 26(1), (2)(a) (s 26 as substituted: see note 3 supra)), and the Lord Chancellor and the Chancellor of the Duchy of Lancaster acting jointly exercise this power in relation to a commission area which is partly included within the counties of Greater Manchester and Merseyside and the retained county of Lancashire (ss 25(2), 26(1), (2)(b) (as so substituted)).

6 Ibid s 25(2).

7 *Harcourt v Fox* (1693) 1 Show 506. Without prejudice to the powers of the keeper of the rolls, a principal council must make proper arrangements with respect to any documents which belong to or are in its custody or the custody of any of its officers: Local Government Act 1972 s 224(1) (renumbered by the Local Government Act 1985 s 84, Sch 14 para 22); and see LOCAL GOVERNMENT vol 69 (2009) PARA 536.

8 See the Courts Act 1971 s 56(1), Sch 8 para 1.

9 See ibid s 8, Sch 1 para 1 (repealed). 'Crown Court' means: (1) in relation to England and Wales, the Crown Court constituted by the Courts Act 1971 s 4 (repealed) (see now the Supreme Court Act 1981 s 8); (2) in relation to Northern Ireland, the Crown Court constituted by the Judicature (Northern Ireland) Act 1978 s 4 (as amended): Interpretation Act 1978 s 5, Sch 1. For the meaning of 'England' see PARA 501 note 7 ante; and for the meaning of 'Wales' see PARA 501 note 7 ante. As to the jurisdiction of the Crown Court see COURTS.

## UPDATE

### 506-516 Appointment and Qualifications

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

### 508 Keeper of the rolls (*custos rotulorum*)

TEXT AND NOTES--Replaced by Courts Act 2003 s 16 (amended by Constitutional Reform Act 2005 Sch 4 para 318).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(2) APPOINTMENT AND QUALIFICATIONS/509. Ex officio justices.

### 509. Ex officio justices.

A District Judge (Magistrates' Courts)<sup>1</sup> (and a Deputy District Judge (Magistrates' Courts)<sup>2</sup> for the period of his appointment<sup>3</sup>), is by virtue of his office a justice of the peace for every commission area<sup>4</sup>.

All other provisions which formerly conferred the status of ex officio justice on certain officers have now been repealed<sup>5</sup>. The former practice of naming the Lord Chancellor and certain judges and law officers in every commission of the peace was discontinued in 1974<sup>6</sup>.

1 As to the appointment and tenure of office of District Judges (Magistrates' Courts) see PARA 573 post.

2 As to the appointment and tenure of office of Deputy District Judges (Magistrates' Courts) see PARA 575 post.

3 See the Justices of the Peace Act 1997 s 10B(4) (as added); and PARA 575 post.

4 See ibid s 10C(1) (as added); and PARA 578 post.

5 Eg local authority chairman and mayors ceased to be ex officio justices by virtue of the Justices of the Peace Act 1968 s 1, Sch 1, and the Metropolitan Police Commissioner and assistant commissioners by virtue of the Administration of Justice Act 1973 s 19(1), Sch 5 Pt II. The Lord Mayor and aldermen of the City of London may not be justices of the peace unless appointed by the Lord Chancellor in accordance with the Justices of the Peace Act 1997: Access to Justice Act 1999 s 76(1). As to the Metropolitan Police Commissioner see POLICE vol 36(1) (2007 Reissue) PARA 183 et seq. As to the Lord Mayor and aldermen of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 44 et seq. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

6 For the present form of commission see the Crown Office (Forms and Proclamations Rules) Order 1992, SI 1992/1730 (amended by SI 1996/276; SI 1996/739; and SI 2000/3064).

## UPDATE

### 506-516 Appointment and Qualifications

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

### 509 Ex officio justices

NOTE 6--SI 1992/1730 further amended: SI 2005/617.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(2) APPOINTMENT AND QUALIFICATIONS/510. Residence qualification.

### 510. Residence qualification.

Subject to the Lord Chancellor's<sup>1</sup> powers of exemption<sup>2</sup>, a person may not be appointed as a justice of the peace for a commission area<sup>3</sup>, nor act<sup>4</sup> as a justice of the peace by virtue of any such appointment, unless he resides in or within 15 miles<sup>5</sup> of that area<sup>6</sup>. If the Lord Chancellor is of the opinion, however, that it is in the public interest for a person to act as justice of the peace for a particular area although not qualified to do so under the requirement as to residence<sup>7</sup>, he may direct that the requirement is not to apply in relation to that person's appointment as a justice of the peace for the area so specified so long as any conditions specified in the direction are satisfied<sup>8</sup>.

If a person who is the Lord Mayor or an alderman of the City of London<sup>9</sup> is appointed<sup>10</sup> as a justice of the peace for a commission area including the City of London, the residence requirement<sup>11</sup> does not apply in relation to his appointment as a justice of the peace for that area so long as he holds either of those offices<sup>12</sup>.

Where a person appointed as a justice of the peace for a commission area is not qualified to act by reason of his residence<sup>13</sup>, he must be removed from office as a justice of the peace<sup>14</sup> if the Lord Chancellor is of the opinion that the appointment ought not to continue having regard to the probable duration and other circumstances of the lack of qualification<sup>15</sup>. No act or appointment is invalidated, however, by reason only of the disqualification or lack of qualification, on the grounds of residence, of the person acting or appointed<sup>16</sup>.

1 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 Ie under the Justices of the Peace Act 1997 s 6 (as amended): see the text and notes infra.

3 Ie in accordance with ibid s 5 (as amended): see PARA 506 ante. As to commission areas see PARA 507 ante.

- 4 As to disqualification for acting as justice in particular cases see PARA 550 et seq post. As to the entry of a justice's name on the supplemental list see PARA 519 post.
- 5 The distance must be measured in a straight line on a horizontal plane: Interpretation Act 1978 ss 8, 22(1).
- 6 Justices of the Peace Act 1997 s 6(1).
- 7 le under ibid s 6(1): see the text to notes 1-5 supra.
- 8 Ibid s 6(2). The Chancellor of the Duchy of Lancaster exercises this power in relation to a commission area which is wholly included within the counties of Greater Manchester and Merseyside and the retained county of Lancashire (ss 6(2), 26(1), (2)(a) (s 26 substituted by the Access to Justice Act 1999 s 76, Sch 10 paras 47, 50)), and the Lord Chancellor and the Chancellor of the Duchy of Lancaster acting jointly exercise this power in relation to a commission area which is partly included within the counties of Greater Manchester and Merseyside and the retained county of Lancashire (Justices of the Peace Act 1997 ss 6(2), 26(1), (2)(b) (as so substituted)). As to the Duchy and County Palatine of Lancaster see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 307; CROWN PROPERTY vol 12(1) (Reissue) PARA 300 et seq. As to the meaning of 'the retained county of Lancashire' see PARA 506 note 5 ante.
- 9 As to the Lord Mayor and aldermen of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 44 et seq.
- 10 See note 3 supra.
- 11 See note 7 supra.
- 12 Justices of the Peace Act 1997 s 6(1A) (added by the Access to Justice Act 1999 s 76(2), Sch 10 paras 47, 48).
- 13 le under the Justices of the Peace Act 1997 s 6(1), (1A) (as added), (2): see the text and notes 1-12 supra.
- 14 As to removal from office as a justice of the peace see PARA 518 post.
- 15 Justices of the Peace Act 1997 s 6(3). The Chancellor of the Duchy of Lancaster exercises this power in relation to a commission area which is wholly included within the counties of Greater Manchester and Merseyside and the retained county of Lancashire (ss 6(3), 26(1), (2)(a) (as substituted: see note 8 supra)), and the Lord Chancellor and the Chancellor of the Duchy of Lancaster acting jointly exercise this power in relation to a commission area which is partly included within the counties of Greater Manchester and Merseyside and the retained county of Lancashire (ss 6(3), 26(1), (2)(b) (as so substituted)).
- 16 Ibid s 6(4).

## UPDATE

### 506-516 Appointment and Qualifications

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(2) APPOINTMENT AND QUALIFICATIONS/511. Disqualification because of profession, sex or office.

#### 511. Disqualification because of profession, sex or office.

No one is disqualified for the office of justice of the peace because of his or her profession<sup>1</sup> or sex<sup>2</sup>.

The sheriff of a county while holding that office may not act<sup>3</sup> as a justice of the peace for that county, and, if he does so, all his acts done in the capacity of justice during his tenure of shrievalty are void<sup>4</sup>.

A justice of the peace who is elected coroner for the county or division to the commission of the peace of which he is assigned may continue to act as a justice<sup>5</sup>.

The offices of justice and of clerk to the justices in the same county or division are incompatible<sup>6</sup>, and if the clerk becomes a justice he thereby vacates his office as clerk<sup>7</sup>. If, however, a justice is appointed clerk to the justices he does not, apparently, vacate the office of justice, because he cannot resign that office without the consent of the Crown<sup>8</sup>.

1 The *Report of the Royal Commission on Justices of the Peace* (Cmd 7463) (1948) PARA 350, summarising paras 132, 133, recommended that administrative bars to the appointment of certain categories of persons as justices should be as few as possible. Nevertheless, the Royal Commission reported (see PARA 132) that the Lord Chancellor exercised administrative discretion with regard to the classes of persons appointed to the bench and indicated that it was desirable that he should continue to do so. It is understood that a similar discretion is exercised by the Chancellor of the Duchy of Lancaster. Solicitors could not formerly be justices for the county in which they practised (see the Justices Qualification Act 1871 (repealed)), but this disability was removed by the Justices of the Peace Act 1906 s 3 (repealed). For the statutory restriction on the right to practice of a solicitor who is a justice of the peace see the Solicitors Act 1974 s 38 (as amended); and LEGAL PROFESSIONS vol 65 (2008) PARA 731. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq. As to the Duchy and County Palatine of Lancaster see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 307; CROWN PROPERTY vol 12(1) (Reissue) PARA 300 et seq.

The Lord Chancellor requires that each bench should broadly reflect the community it serves in terms of gender, ethnic origin, geographical spread, occupation and political affiliation: *Lord Chancellor's Directions for Advisory Committees on Justices of the Peace* (July 1998) Section 8 para 8.1. Magistrates are encouraged voluntarily to disclose whether they are Freemasons: see the Lord Chancellor's Department Circular AC (14) 98 (30 September 1998) 'Freemasonry and the Magistracy'. A candidate for appointment as a magistrate must be able to demonstrate the six key qualities of good character, understanding and communication, social awareness, maturity and sound temperament, sound judgement and commitment and reliability: see the *Lord Chancellor's Directions for Advisory Committees on Justices of the Peace* (July 1998) Section 6 para 6.2. For the factors which act as a bar to appointment or continuance in office as a magistrate see the *Lord Chancellor's Directions for Advisory Committees on Justices of the Peace* (July 1998) Section 7.

2 See the Sex Disqualification (Removal) Act 1919 s 1 (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 904. The Sex Discrimination Act 1975 would not appear to bind the Crown in the exercise of the prerogative.

3 As to disqualification for acting as justice in particular cases see PARA 550 et seq post.

4 See the Sheriffs Act 1887 s 17; and SHERIFFS vol 42 (Reissue) PARA 1106. In its application to Greater London the reference to a justice of the peace for a county is to be construed as a reference to any justice of the peace for a commission area consisting of or including the whole or part of Greater London: see the Administration of Justice Act 1964 s 19(4)(a) (amended by the Access to Justice Act 1999 s 76(2), Sch 10, PARA 30(1), (4)(b)). As to commission areas see PARA 507 ante.

5 *Davis v Pembrokeshire Justices* (1881) 7 QBD 513, DC; and see CORONERS vol 9(2) (2006 Reissue) PARA 914.

6 *R v Douglas* [1898] 1 QB 560, DC.

7 *R v Douglas* [1898] 1 QB 560, DC; and see also *R v Bangor Corpn* (1886) 18 QBD 349 at 361, CA, per Lord Esher MR.

8 It was so held in Ireland in *Forbes v Lloyd* (1876) IR 10 CL 552, Ex Ch, approving *R v Patteson* (1832) 4 B & Ad 9. See also *Worth v Newton* (1854) 10 Exch 247.

## UPDATE

### 506-516 Appointment and Qualifications

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(2) APPOINTMENT AND QUALIFICATIONS/512. Disqualification by bankruptcy or crime.

### **512. Disqualification by bankruptcy or crime.**

A bankrupt is disqualified for being appointed or acting<sup>1</sup> as a justice of the peace<sup>2</sup>. If a magistrate is convicted of treason his office is vacated<sup>3</sup>. If a justice of the peace is reported by an election court to have been guilty of any corrupt practice in reference to an election, the court must report the case to the Lord Chancellor<sup>4</sup> with such evidence as may have been given of the corrupt practice<sup>5</sup>. The administrative discretion of the Lord Chancellor and the Chancellor of the Duchy of Lancaster<sup>6</sup> secures that conviction of a serious offence which is not a legal disqualification is nevertheless a bar to appointment or continuance as a justice<sup>7</sup>. The right of non-disclosure of spent convictions<sup>8</sup> does not apply in certain circumstances to justices of the peace or candidates for appointment as justices of the peace<sup>9</sup>.

1 As to disqualification for acting as justice in particular cases see PARA 550 et seq post.

2 Justices of the Peace Act 1997 s 65(1). Where a person is so disqualified, the disqualification ceases on his discharge from bankruptcy, or if the bankruptcy order is previously annulled, on the date of its annulment: s 65(2). As to bankruptcy see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

3 See the Forfeiture Act 1870 s 2 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1818.

4 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

5 Representation of the People Act 1983 s 161 (amended by the Representation of the People Act 1985 ss 24, 28, Sch 4 para 53, Sch 5). See further ELECTIONS AND REFERENDUMS vol 15(4) (2007 Reissue) PARA 900.

6 As to the Duchy and County Palatine of Lancaster see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 307; CROWN PROPERTY vol 12(1) (Reissue) PARA 300 et seq.

7 *Royal Commission on Justices of the Peace* (Cmd 7463) (1948) PARA 125.

8 *Re* under the Rehabilitation of Offenders Act 1974 s 4(2), (3)(b): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 664.

9 See the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, arts 3(a)(ii) (as substituted), 4(b) (as substituted), Sch 1 Pt II (as amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 668.

## **UPDATE**

### **506-516 Appointment and Qualifications**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

### **512 Disqualification by bankruptcy or crime**

TEXT AND NOTES 1, 2--1997 Act s 65 repealed: Enterprise Act 2002 s 265.

TEXT AND NOTE 5--1983 Act s 161 further amended: Constitutional Reform Act 2005 Sch 4 para 149.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(2) APPOINTMENT AND QUALIFICATIONS/513. Oaths of office.

### **513. Oaths of office.**

As soon as may be after accepting office, a newly-appointed justice of the peace<sup>1</sup> for any area is required to take the oath of allegiance and the judicial oath<sup>2</sup> unless he has at any time done so as a justice of the peace for that or any other area<sup>3</sup>. Any person who, under the Justices of the Peace Act 1997, is a justice of the peace for any area by virtue of any other office held by him<sup>4</sup> must, before acting as such a justice, take the oath of allegiance and the judicial oath<sup>5</sup>. These oaths must be taken before such persons as Her Majesty may from time to time appoint<sup>6</sup>, or before the Lord Chancellor<sup>7</sup>, or in open court before one or more judges in the Queen's Bench or Chancery Division of the High Court<sup>8</sup>, or in open court in the Crown Court<sup>9</sup>.

The oaths required by law to be taken by a Deputy District Judge (Magistrates' Courts)<sup>10</sup> may be taken before any District Judge (Magistrates' Courts)<sup>11</sup>.

1 As to the appointment of justices of the peace see PARA 506 ante.

2 See the Promissory Oaths Act 1868 ss 2, 4, 6 (as amended), Schedule Pt II (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 923.

3 Justices of the Peace Act 1997 s 69(3).

4 As to ex officio justices see PARA 509 ante.

5 Justices of the Peace Act 1997 s 69(1). However, a person is not required by virtue of s 69(1) to take those oaths as a justice of the peace by reason only of his being appointed under the Justices of the Peace Act 1997 to act temporarily as deputy for, or as if he were, the holder of another office to which s 69(1) applies: s 69(2). The oaths may, however, be taken by and administered to any such person despite anything in the Promissory Oaths Act 1868, the Promissory Oaths Act 1871, or any other enactment: Justices of the Peace Act 1997 s 69(2), (5).

6 Her Majesty has declared that these oaths may be taken by a justice of the peace for any area for which there is a commission of the peace before any two justices of the peace for the area: see the Home Office Circular 142/74. As to commissions of the peace see PARA 507 ante.

7 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

8 'High Court' means: (1) in relation to England and Wales, Her Majesty's High Court of Justice in England; (2) in relation to Northern Ireland, Her Majesty's High Court of Justice in Northern Ireland: Interpretation Act 1978 s 5, Sch 1. For the meaning of 'England' see PARA 501 note 7 ante; and for the meaning of 'Wales' see PARA 501 note 7 ante. As to the jurisdiction of the High Court see COURTS.

9 See the Promissory Oaths Act 1871 s 2 (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 924. For the meaning of 'Crown Court' see PARA 508 note 9 ante.

10 As to the appointment and tenure of office of Deputy District Judges (Magistrates' Courts) see PARA 575 post.

11 Justices of the Peace Act 1997 s 69(4) (amended by the Access to Justice Act 1999 s 78(2), Sch 11 paras 43, 48). As to the appointment and tenure of office of District Judges (Magistrates' Courts) see PARA 573 post.

## **UPDATE**

### **506-516 Appointment and Qualifications**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.



Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(2) APPOINTMENT AND QUALIFICATIONS/514. Effect of not taking oaths.

#### **514. Effect of not taking oaths.**

A justice who declines or neglects to take the requisite oaths<sup>1</sup> when duly tendered vacates his office if he has already attempted to enter on it, and, if he has not entered on it, he is disqualified from doing so<sup>2</sup>. Anything, however, that he may have done as a justice before being duly qualified is not void, as the public interest requires that it should be sustained<sup>3</sup>.

1 As to the requisite oaths see PARA 513 ante.

2 See the Promissory Oaths Act 1868 s 7 (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 923.

3 *Margate Pier Co v Hannam* (1819) 3 B & Ald 266; *R v Herefordshire Justices* (1819) 1 Chit 700; *R v Jordan* (1736) 9 East 263n.

#### **UPDATE**

#### **506-516 Appointment and Qualifications**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(2) APPOINTMENT AND QUALIFICATIONS/515. Precedence.

#### **515. Precedence.**

Subject to the requirement that the chairman or a deputy chairman, if present, must normally preside at meetings of the justices<sup>1</sup>, to rules made under the Justices of the Peace Act 1997 as to who is eligible to preside in court<sup>2</sup>, and to any established rule or custom affecting a particular bench, precedence among justices is generally determined by seniority according to the order of the names on the commission of the peace<sup>3</sup>.

1 As to chairmanship of the bench see PARA 595 post.

2 As to presiding justices see PARA 595 post.

3 See the Home Office Circular dated 16 October 1907.

#### **UPDATE**

#### **506-516 Appointment and Qualifications**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(2) APPOINTMENT AND QUALIFICATIONS/516. Provision of training courses for justices.

### **516. Provision of training courses for justices.**

It is the duty of every magistrates' courts committee<sup>1</sup>, in accordance with arrangements approved by the Lord Chancellor<sup>2</sup>, to make and administer schemes providing for training courses for justices of the peace of its area<sup>3</sup>. The cost of administering such courses falls to be included in the expenses of the magistrates' courts committee which are to be borne by the paying authority<sup>4</sup> or authorities in relation to that committee<sup>5</sup>.

If training courses are not provided for justices of the peace of any area, then any expenses incurred by the Lord Chancellor in providing training courses to make good the default are recoverable by him from the magistrates' courts committee<sup>6</sup>.

1 As to magistrates' courts committees see PARA 612 et seq post.

2 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 Justices of the Peace Act 1997 s 64(1). The Judicial Studies Board (Magisterial Committee) has responsibility for advising the Lord Chancellor on the training requirements for lay justices and has issued a training syllabus '*The Magistrates' New Training Initiative*' which adopts a competence based approach to training. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

4 For the meaning of 'paying authority' see PARA 642 note 1 post.

5 See the Justices of the Peace Act 1997 ss 55(1)(b); and PARA 593 post. This is subject to the cash limits imposed by s 55(7): see PARA 642 post. As to expenditure which is taken not to be capital expenditure for certain purposes of the Justices of the Peace Act 1997 see the Magistrates' Courts (Grants) Regulations 1998, SI 1998/2165; and PARA 643 post. As to travelling and lodging allowances which are payable to justices following approved training courses see PARA 564 post.

6 Justices of the Peace Act 1997 s 64(2).

## **UPDATE**

### **506-516 Appointment and Qualifications**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

### **516 Provision of training courses for justices**

TEXT AND NOTES--Replaced. Rules made by the Lord Chief Justice may make provision about the training, development and appraisal of lay justices, and related matters: Courts Act 2003 s 19(1), (2) (s 19(2) amended by Constitutional Reform Act 2005 Sch 4 para 320(2)). The Lord Chief Justice must ensure the provision of training and training materials that appear to him, after consulting the Lord Chancellor, to be appropriate for lay magistrates with a view to enabling them to comply with requirements as to training imposed by rules under the 2003 Act s 10 or 18 or 19: s 19(3) (amended by 2005 Act Sch 4 para 320(3)). The Lord Chief Justice may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4)) to exercise his functions under the 2003 Act s 19: s 19(4) (added by 2005 Act Sch 4 para 320(4)).

See the Justices of the Peace (Training and Development Committee) Rules 2007, SI 2007/1609, which make provision for bench training and development committees for each local justice area (see PARA 507) and magistrates' area training committees; and

the Youth Courts (Constitution of Committees and Right to Preside) Rules 2007, SI 2007/1611 (amended by SI 2007/2622), which provide for the formation for each local justice area of a youth panel consisting of the youth justices for the local justice area that is to advise the appropriate body in relation to the number of justices required to sit and preside in youth courts in its local justice area and liaise with other bodies to share information and represent the views of youth justices.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(3) DURATION OF OFFICE/517. Tenure of office.

### **(3) DURATION OF OFFICE**

#### **517. Tenure of office.**

A justice of the peace enters upon the office when he has been assigned to the commission of the peace<sup>1</sup>. He may relinquish the office by resignation, and he may be removed at the discretion of the Lord Chancellor<sup>2</sup>.

1 As to commissions of the peace see PARA 507 ante.

2 As to the discretion of the Lord Chancellor where a justice loses his residence qualification see PARA 510 ante. As to removal from office as a justice of the peace see PARA 519 post. As to the age limit see PARA 520 post. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

#### **UPDATE**

#### **517 Tenure of office**

TEXT AND NOTE 2--A lay justice (see PARA 506) may resign his office at any time: Courts Act 2003 s 11(1).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(3) DURATION OF OFFICE/518. Removal.

#### **518. Removal.**

The removal of a justice of the peace for any commission area<sup>1</sup> is effected by an instrument by the Lord Chancellor<sup>2</sup>, on behalf and in the name of Her Majesty<sup>3</sup>. A copy of the instrument of removal must be sent to the keeper of the rolls<sup>4</sup> for the commission area<sup>5</sup>.

1 As to commission areas see PARA 507 ante.

2 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 Justices of the Peace Act 1997 s 5(1). The Chancellor of the Duchy of Lancaster exercises this power in relation to a commission area which is wholly included within the counties of Greater Manchester and Merseyside and the retained county of Lancashire (ss 5(1), 26(1), (2)(a) (s 26 substituted by the Access to Justice Act 1999 s 76, Sch 10 paras 47, 50)), and the Lord Chancellor and the Chancellor of the Duchy of Lancaster acting jointly exercise this power in relation to a commission area which is partly included within the counties of Greater Manchester and Merseyside and the retained county of Lancashire (Justices of the Peace Act 1997 ss 5(1), 26(1), (2)(b) (as so substituted)). As to the Duchy and County Palatine of Lancaster see

CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 307; CROWN PROPERTY vol 12(1) (Reissue) PARA 300 et seq. As to the meaning of 'the retained county of Lancashire' see PARA 506 note 5 ante.

Justices were formerly removed from the commission of the peace by a writ of discharge or of supersedeas issued under the Great Seal: 1 Bl Com (14th Edn) 353.

4 As to the keeper of the rolls see PARA 508 ante.

5 Justices of the Peace Act 1997 s 25(2).

## UPDATE

### 518 Removal

TEXT AND NOTES--Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. The Lord Chancellor may, with the concurrence of the Lord Chief Justice, remove a lay justice from his office by an instrument on behalf and in the name of Her Majesty (1) on the ground of incapacity or misbehaviour, (2) on the ground of a persistent failure to meet such standards of competence as are prescribed by a direction given by the Lord Chancellor with the concurrence of the Lord Chief Justice, or (3) if he is satisfied that the lay justice is declining or neglecting to take a proper part in the exercise of his functions as a justice of the peace: s 11(2) (amended by Constitutional Reform Act 2005 Sch 4 para 314).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(4) SUPPLEMENTAL LIST/519. Supplemental list.

## (4) SUPPLEMENTAL LIST

### 519. Supplemental list.

There is kept in the office of the Clerk of the Crown in Chancery<sup>1</sup> a supplemental list of justices of the peace for England and Wales<sup>2</sup>. The name of a justice is entered in the list in the following circumstances:

- 1 (1) if the justice has attained the age<sup>3</sup> of 70 years and neither holds nor has held high judicial office<sup>4</sup>;
- 2 (2) if the justice holds or has held high judicial office and has attained the age of 75 years<sup>5</sup>;
- 3 (3) by the direction of the Lord Chancellor<sup>6</sup> if he is satisfied either that by reason of the justice's age or infirmity or other like cause it is expedient that the justice should cease to exercise judicial functions as a justice for that area, or that the justice declines or neglects to take a proper part in the exercise of those functions<sup>7</sup>;
- 4 (4) by the direction of the Lord Chancellor<sup>8</sup> if the justice is appointed a justice for an area on ceasing to be a justice for some other area<sup>9</sup>;
- 5 (5) if a justice applies for his name to be entered in the list and the Lord Chancellor<sup>10</sup> approves the application<sup>11</sup>.

The supplemental list does not apply to persons holding office as District Judges (Magistrates' Courts)<sup>12</sup>.

A person's name must be removed from the supplemental list if he ceases to be a justice of the peace<sup>13</sup>. The name of any person, if not required by reason of his age to be entered in the list<sup>14</sup>, may be removed from the list on the direction of the Lord Chancellor<sup>15</sup>.

1 As to the office of the Clerk of the Crown in Chancery see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 921.

2 Justices of the Peace Act 1997 ss 7(1), 72(1). For the meaning of 'England' see PARA 501 note 7 ante; and for the meaning of 'Wales' see PARA 501 note 7 ante.

This list is in lieu of that provided for by the Justices of the Peace Act 1979 s 8 (repealed), but includes the like names and is of the like effect as that list, so that where a person ceases to be a justice for any commission area and is then appointed a justice for another area the Lord Chancellor may direct his name to be entered in the supplemental list (Justices of the Peace Act 1997 s 7(5)), and the entry of a person's name in the list does not preclude him, if so authorised by the Lord Chancellor, from acting as a judge of the Crown Court so long as he has not attained the age of 72 years (see s 9(3); and PARA 520 post). As to commission areas see PARA 507 ante. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq. For the meaning of 'Crown Court' see PARA 508 note 9 ante.

Reference in any enactment passed or instrument made before 18 April 1973 to a supplemental list kept by virtue of the Justices of the Peace Act 1949 s 4 (repealed), in connection with the commission of the peace for any area takes effect as a reference to the supplemental list kept under the Justices of the Peace Act 1997 s 7 (as amended): s 73(1), Sch 4 para 25(1)(b), (2)(b). As to commissions of the peace see PARA 507 ante.

3 As to a person's age see PARA 738 post.

4 Justices of the Peace Act 1997 s 7(2)(a). 'High judicial office' means the office of Lord Chancellor of Great Britain or of Judge of one of Her Majesty's superior courts of Great Britain and Ireland: Appellate Jurisdiction Act 1876 s 25 (definition amended by the Administration of Justice Act 1965 s 34, Sch 2; and the Justices of the Peace Act 1968 s 8(2), Sch 5 Pt I); definition applied by the Justices of the Peace Act 1997 s 7(2)(a). See further COURTS. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a).

Where, on the date when his name falls to be entered in the supplemental list in accordance with heads (1) and (2) in the text, a justice holds office as chairman of the justices for a petty sessions area, his name is entered on the expiration or earlier determination of his term of office as chairman: Justices of the Peace Act 1997 s 7(3) (amended by the Access to Justice Act 1999 s 106, Sch 15 Pt V). As to petty sessions areas see PARAS 591-592 post.

5 Justices of the Peace Act 1997 s 7(2)(b). See note 4 supra.

6 The Chancellor of the Duchy of Lancaster exercises this power in relation to a person who is a justice of the peace only for a commission area which is wholly included within the counties of Greater Manchester and Merseyside and the retained county of Lancashire (ss 7(4), (5), (6), 26(1), (3)(a) (s 26 substituted by the Access to Justice Act 1999 s 76, Sch 10 paras 47, 50)), and the Lord Chancellor and the Chancellor of the Duchy of Lancaster acting jointly exercise this power in relation to a person who is a justice either for such a commission area and another commission area or for a commission area which is partly included within the counties of Greater Manchester and Merseyside and the retained county of Lancashire (Justices of the Peace Act 1997 ss 7(4), (5), (6), 26(1), (3)(b) (as so substituted)). As to the Duchy and County Palatine of Lancaster see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 307; CROWN PROPERTY vol 12(1) (Reissue) PARA 300 et seq. As to the meaning of 'the retained county of Lancashire' see PARA 506 note 5 ante.

7 Ibid s 7(4).

8 See note 6 supra.

9 Justices of the Peace Act 1997 s 7(5).

10 See note 6 supra.

11 Justices of the Peace Act 1997 s 7(6).

12 Ibid s 7(7) (amended by the Access to Justice Act 1999 s 78(2), Sch 11 paras 43, 45). As to the appointment and tenure of office of District Judges (Magistrates' Courts) see PARA 573 post.

13 Justices of the Peace Act 1997 s 8(1)(a).

14 Ie under ibid s 7(2) or s 7(3): see the text and notes 3-5 supra.

15 Ibid s 8(1)(b). See note 6 supra.

**UPDATE****519-520 Supplemental List**

Justices of the Peace Act 1997 ss 7-9 (repealed) replaced by Courts Act 2003 ss 12-14 (2003 Act ss 13, 14 amended by Constitutional Reform Act 2005 Sch 4 paras 315, 316).

**519 Supplemental list**

TEXT AND NOTES 4, 5--1997 Act s 7(2)(a), (b) amended: Constitutional Reform Act 2005 Sch 17 para 26, Sch 18 Pt 5 (in force 1 October 2009: SI 2009/1604).

NOTE 4--1876 Act s 25 partly repealed: Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No 2) Order 2006, SI 2006/1016. 1876 Act repealed: Constitutional Reform Act 2005 Sch 17 para 9, Sch 18 Pt 5 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(4) SUPPLEMENTAL LIST/520. Powers of justices on the supplemental list.

**520. Powers of justices on the supplemental list.**

While his name is entered in the supplemental list<sup>1</sup>, a justice of the peace for any area is not by reason of being a justice for that area qualified as a justice to do any act or to be a member of any committee or other body<sup>2</sup>. However, this does not preclude a justice from signing any document for the purpose of authenticating another person's signature<sup>3</sup>, taking and authenticating by his signature any written declaration not made on oath<sup>4</sup>, and giving a certificate of facts within his knowledge or of his opinion as to any matter<sup>5</sup>. The entry of a person's name does not preclude him, if so authorised by the Lord Chancellor<sup>6</sup>, from acting as a judge of the Crown Court<sup>7</sup> so long as he has not attained the age of 72 years<sup>8</sup>. No act or appointment is invalidated by reason of the disqualification under these provisions of the person acting or appointed<sup>9</sup>.

1 As to the supplemental list see PARA 519 ante.

2 Justices of the Peace Act 1997 s 9(1) (which is expressed to be subject to s 9(2)-(4) (see the text and notes 3-9 infra)).

3 Ibid s 9(2)(a). Any such act as is mentioned in s 9(2)(a)-(c) (see the text to notes 4-5 infra), where it may be done by a justice of the peace, may, subject to any express provision made to the contrary by any enactment or instrument relating to that act, be done also by any person who is mayor of a London borough or chairman of a county or district council in England or Wales: Administration of Justice Act 1973 s 5 (substituted by the Justices of the Peace Act 1997 s 73(2), Sch 5 para 13(2)); Administration of Justice Act 1973 Sch 1 para 7 (amended by the Local Government Act 1985 s 102, Sch 17; and the Justices of the Peace Act 1997 Sch 5 para 13(1), (4)). The Administration of Justice Act 1973 s 5 (as substituted), Sch 1 para 7 (as amended) do not extend to Scotland or to Northern Ireland: see s 21. As to London boroughs see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 30; and as to areas and authorities in England and Wales generally see LOCAL GOVERNMENT vol 69 (2009) PARAS 24 et seq, 37 et seq.

4 Justices of the Peace Act 1997 s 9(2)(b). See note 3 supra. 'Oath' includes affirmation and declaration: Interpretation Act 1978 s 5, Sch 1. As to the meaning of 'writing' see PARA 507 note 12 ante.

5 Justices of the Peace Act 1997 s 9(2)(c). See note 3 supra.

- 6 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.
- 7 For the meaning of 'Crown Court' see PARA 508 note 9 ante.
- 8 Justices of the Peace Act 1997 s 9(3). As to a person's age see PARA 738 post.
- 9 Ibid s 9(4).

## UPDATE

### 519-520 Supplemental List

Justices of the Peace Act 1997 ss 7-9 (repealed) replaced by Courts Act 2003 ss 12-14 (2003 Act ss 13, 14 amended by Constitutional Reform Act 2005 Sch 4 paras 315, 316).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(5) LIMITS OF JURISDICTION/(i) Local Limit/521. Local limit.

## (5) LIMITS OF JURISDICTION

### (i) Local Limit

#### 521. Local limit.

The local limit of a justice's jurisdiction is in general the boundary of the commission of the peace<sup>1</sup> of which he is assigned. However, a justice of the peace for any commission area<sup>2</sup> may act as a justice for that area in any commission area which adjoins the commission area for which he is a justice<sup>3</sup>. A justice may act in any division of his area<sup>4</sup> unless some specific statutory provision requires otherwise<sup>5</sup>. There is a general power to cross-remand between petty sessional areas within the commission area<sup>6</sup>.

1 As to commissions of the peace see PARA 507 ante.

2 As to commission areas see PARA 507 ante.

3 Justices of the Peace Act 1997 s 68(1). He may not act as a justice for those other jurisdictions unless permitted by statute: see *R v Beacontree Justices, Division of Essex* [1915] 3 KB 388, DC.

4 See *R v Beckley* (1887) 20 QBD 187, (1887) 52 JP 120; *Caistor RDC v Taylor* (1907) 71 JP 310, (1907) 97 LT 281, DC.

5 See eg the Betting Gaming and Lotteries Act 1963 Sch 1 (as amended); and the Licensing Act 1964 s 2 (as amended).

6 *R v Avon Magistrates' Courts Committee, ex p Bath Law Society* [1988] QB 409, [1998] 2 WLR 137, DC.

## UPDATE

### 521 Local limit

TEXT AND NOTES 1-3--Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

NOTE 5--Betting, Gaming and Lotteries Act 1963 Sch 1 repealed: Gambling Act 2005 s 356(3)(f), Sch 4.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(5) LIMITS OF JURISDICTION/(i) Local Limit/522. Normal jurisdiction to issue process.

## **522. Normal jurisdiction to issue process.**

On an information being laid<sup>1</sup> before a justice of the peace<sup>2</sup> for a commission area<sup>3</sup> that any person has, or is suspected of having, committed an offence<sup>4</sup>, the justice may, in any of certain events<sup>5</sup>, issue<sup>6</sup>: (1) a summons directed to that person requiring him to appear before a magistrates' court<sup>7</sup> for the area to answer to the information<sup>8</sup>; or (2) a warrant to arrest<sup>9</sup> that person and bring him before a magistrates' court for the area or the appropriate magistrates' court<sup>10</sup>, provided that the information is in writing and substantiated on oath<sup>11</sup>.

The events in which a justice for an area may so issue a summons or warrant are: (a) if the offence was committed or is suspected to have been committed within the area<sup>12</sup>; (b) if under any enactment<sup>13</sup> a magistrates' court for the area has jurisdiction to try the offence<sup>14</sup>; or (c) any of the events giving rise to extended jurisdiction<sup>15</sup>.

1 As to the need for an information see *R v Fuller* (1699) 1 Ld Raym 509 (information must be laid and supported by prior fact); *Evans v McLoughlan* (1861) 4 LT 31, HL (information not needed where arrest immediate); *Turner v Postmaster-General* (1864) 5 B & S 756 (want of written information cured by appearance); *R v Hughes* (1879) 4 QBD 614, CCR. As to the laying of informations see PARA 681 et seq post.

2 Information may be laid, other than an information substantiated on oath, before a justices' clerk for the same petty sessions area as the justice of the peace (Justices' Clerks Rules 1999, SI 1999/2784, r 2, Schedule para 1), and the justices' clerk may issue a summons, including a witness summons (Schedule para 2), but not a warrant, on the information. As to justices' clerks see PARA 631 et seq post. As to petty sessions areas see PARAS 591-592 post. As to witness summonses see PARA 734 post.

3 Magistrates' Courts Act 1980 s 1(8) (amended by the Magistrates' Courts (Wales) (Consequences of Local Government Changes) Order 1996, SI 1996/675, art 2, Schedule para 2(1)). As to commission areas see PARA 507 ante.

4 Except where the context otherwise requires, any reference in the Magistrates' Courts Act 1980 to an offence is construed as including a reference to an alleged offence; and any reference in the Act to an offence committed, completed or begun anywhere is construed as including a reference to an offence alleged to have been committed, completed or begun there: s 150(5).

5 Ie any of the events mentioned in *ibid* s 1(2): see the text to notes 12-15 *infra*; and PARA 523 post.

6 *Ibid* s 1(1).

7 For the meaning of 'magistrates' court' see PARA 583 post.

8 Magistrates' Courts Act 1980 s 1(1)(a). As to summonses generally see PARA 687 et seq post.

9 A warrant for the arrest of any person who has attained the age of 18 may not be issued under *ibid* s 1 unless: (1) the offence to which the warrant relates is an indictable offence or is punishable by imprisonment; or (2) the address of the person is not sufficiently established for a summons to be served on him: s 1(4) (amended by the Criminal Justice Act 1991 s 68, Sch 8 para 6(1)(a)). As to warrants of arrest see PARA 687 et seq post; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 912 et seq. For the meaning of 'indictable offence' see PARA 653 post. As to a person's age see PARA 738 post.

10 Magistrates' Courts Act 1980 s 1(1)(b). The text refers to such magistrates' court as is provided in s 1(5): see PARA 523 post.



11 Ibid s 1(3). As to the meaning of 'writing' see PARA 507 note 12 ante. As to the meaning of 'oath' see PARA 520 note 4 ante.

12 Ibid s 1(2)(a). A court has jurisdiction to deal with an offence if it was in fact committed within its area, even if the summons alleges it was committed elsewhere: *R v Ormskirk Magistrates' Court, ex p Battistini* [1990] Crim LR 591, Times, 5 April, DC. As to offences committed on boundaries or journeys or begun in one jurisdiction and completed in another see the Magistrates' Courts Act 1980 s 3 (as amended); and PARA 525 post.

13 As to the meaning of 'enactment' see PARA 505 note 16 ante.

14 Magistrates' Courts Act 1980 s 1(2)(d). For examples of offences triable by courts having jurisdiction where the offender is for the time being although the offence was committed outside the jurisdiction see the Army Act 1955 s 220.

15 See the Magistrates' Courts Act 1980 s 1(2)(b), (c), (e); and PARA 523 post.

## UPDATE

### 522 Normal jurisdiction to issue process

NOTE 2--SI 1999/2784 r 3, Schedule paras 1, 2 now Justices' Clerks Rules 2005, SI 2005/545, r 3(1), Schedule paras 1, 2.

TEXT AND NOTES 3-11--Words 'for a commission area' and 'in any of certain events' omitted; in head (1) words 'for the area' omitted; and in head (2) words 'for the area ... court' omitted: Magistrates' Courts Act 1980 s 1(1) (substituted by the Courts Act 2003 s 43(1)).

NOTE 10--1980 Act s 1(5) repealed: Courts Act 2003 s 43(2), Sch 10.

TEXT AND NOTE 11--Words 'and substantiated on oath' omitted: 1980 Act s 1(3) (amended by the Criminal Justice Act 2003 s 31(1), Sch 37 Pt 12).

TEXT AND NOTES 12-15--Repealed: Courts Act 2003 s 43(2), Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(5) LIMITS OF JURISDICTION/(i) Local Limit/523. Extended jurisdiction to issue process.

### 523. Extended jurisdiction to issue process.

A justice of the peace for a commission area<sup>1</sup> has power to issue a summons or a warrant<sup>2</sup> in any case where it appears to him necessary or expedient, with a view to the better administration of justice, that the person charged should be tried jointly with, or in the same place as, some other person who is charged with an offence<sup>3</sup>, and who is in custody, or is being or is to be proceeded against, within the area<sup>4</sup>; and where a person charged with a summary offence<sup>5</sup> appears<sup>6</sup> or is brought before a magistrates' court<sup>7</sup> in answer to a summons or warrant so issued that court has jurisdiction to try the offence<sup>8</sup>. A justice also has power to issue a summons or a warrant charging an indictable offence<sup>9</sup> against a person who resides or is, or is believed to reside or be, within the area for which the justice acts, even though the offence was committed in a place outside his jurisdiction<sup>10</sup>; where, in these conditions, the offence is not an indictable offence, there is no such power to issue a summons<sup>11</sup> and any warrant issued must require the person charged to be brought before a magistrates' court having jurisdiction to try the offence<sup>12</sup>. A justice also has power to issue a summons or warrant if the offence was committed outside England and Wales<sup>13</sup> and, where it is an offence exclusively punishable on

summary conviction, if a magistrates' court for the area would have jurisdiction to try the offence if the offender were before it<sup>14</sup>.

A warrant of arrest<sup>15</sup>, warrant of commitment<sup>16</sup>, warrant of detention<sup>17</sup>, warrant of distress<sup>18</sup> or search warrant<sup>19</sup> issued by a justice of the peace may be executed anywhere in England and Wales by any person to whom it is directed or by any constable acting within his police area<sup>20</sup>.

A person anywhere in England or Wales may be summoned to give evidence before a magistrates' court and, in certain circumstances, a warrant for his arrest may be issued<sup>21</sup>.

1 As to commission areas see PARA 507 ante.

2 As to the normal jurisdiction to issue process see PARA 522 ante. As to summonses and warrants of arrest see PARA 687 et seq post.

3 As to the meaning of 'offence' see PARA 522 note 4 ante.

4 Magistrates' Courts Act 1980 s 1(2)(b). It is for the justice who issues the summons or warrant to be satisfied on these points; it is not a requirement of the law that the court before which the person charged appears or is brought must also be satisfied: *Turf Publishers Ltd v Davies* [1927] WN 190, DC. The justice should bear in mind that it is not only the interests of the prosecution that are at state but also the interests of the defendant: *R v Blandford*, *R v Freestone* [1955] 1 All ER 681, [1955] 1 WLR 331, CCA. It is the responsibility of the clerk to the justices to ensure, prior to the issue of a summons, that the court has jurisdiction to issue the summons having particular regard to the requirements of the Magistrates' Courts Act 1980 s 1(2)(b): *R v Abergavenny Justices, ex p Barratt* [1993] Crim LR 785, 158 JP 239.

5 For the meaning of 'summary offence' see PARA 653 post.

6 As to appearance by a legal representative see PARA 725 post.

7 For the meaning of 'magistrates' court' see PARA 583 post.

8 Magistrates' Courts Act 1980 s 2(2).

9 For the meaning of 'indictable offence' see PARA 653 post.

10 See the Magistrates' Courts Act 1980 s 1(2)(c), (5)(a).

11 Ibid s 1(5)(a).

12 Ibid s 1(5)(b).

13 For the meaning of 'England' see PARA 501 note 7 ante; and for the meaning of 'Wales' see PARA 501 note 7 ante.

14 Magistrates' Courts Act 1980 s 1(2)(e).

15 As to warrants of arrest see the Magistrates' Courts Rules 1981, SI 1981/552, r 96 (as amended); para 695 post; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 912 et seq.

16 As to warrants of commitment see ibid r 94 (as substituted); para 860 post; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1162.

17 As to warrants of detention see ibid r 97 (amended by SI 1988/2132; SI 1990/1190; SI 2001/167).

18 As to warrants of distress see the Magistrates' Courts Rules 1981, SI 1981/552, r 54 (as amended); para 860 post; and DISTRESS vol 13 (2007 Reissue) PARA 1134 et seq.

19 As to search warrants see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 871 et seq.

20 Magistrates' Courts Act 1980 s 125(2) (amended by the Access to Justice Act 1999 s 95(1)). As to the office of constable generally see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

21 See the Magistrates' Courts Act 1980 ss 97 (as amended), 97A (as added and amended); and PARAS 675, 734, 736 post.

## UPDATE

### 523 Extended jurisdiction to issue process

TEXT AND NOTES 1-19--1980 Act s 1(2), (5) repealed: Courts Act 2003 s 43(2), Sch 10.

TEXT AND NOTE 8--1980 Act s 1980 Act s 2 substituted: see PARA 524.

NOTE 15--As to warrants of arrest see now Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'), r 18.3 (substituted by SI 2006/353).

NOTE 18--As to warrants of distress see now CrimPR 52.8.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(5) LIMITS OF JURISDICTION/(i) Local Limit/524. Jurisdiction to deal with criminal matters.

### 524. Jurisdiction to deal with criminal matters.

A magistrates' court<sup>1</sup> for a commission area<sup>2</sup> has jurisdiction to try all summary offences<sup>3</sup> committed within the commission area<sup>4</sup>, and, where a person charged with a summary offence appears<sup>5</sup> or is brought before the court under its extended jurisdiction in respect of joint trials<sup>6</sup>, it has jurisdiction to try that offence also<sup>7</sup>. A magistrates' court for any area before which a person is tried for an offence has jurisdiction to try him for any summary offence for which he could be tried by a magistrate's court for any other area<sup>8</sup>.

A magistrates' court for a commission area has jurisdiction as examining justices<sup>9</sup> over any offence<sup>10</sup> committed by a person who appears or is brought before the court, whether or not the offence was committed within the commission area<sup>11</sup>.

Subject to the provisions relating to the mode of trial of offences triable either way<sup>12</sup>, a magistrates' court has jurisdiction to try summarily an offence triable either way in any case where it would<sup>13</sup> have jurisdiction as examining justices<sup>14</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 post.

2 As to commission areas see PARA 507 ante.

3 For the meaning of 'summary offence' see PARA 653 post. As to the procedure for offences triable summarily see PARA 681 et seq post. As to the meaning of 'offence' see PARA 522 note 4 ante. See also *R v East Powder Justices, ex p Lampshire* [1979] QB 616, [1979] 2 All ER 329, DC (defendant not entitled to be tried by the county court, as the court now exercising the Stanneries Court jurisdiction, for a summary offence).

4 Magistrates' Courts Act 1980 s 2(1) (amended by the Local Government Changes for England (Magistrates' Courts) Regulations 1996, SI 1996/674, reg 2, Schedule para 2; and the Magistrates' Courts (Wales) (Consequences of Local Government Changes) Order 1996, SI 1996/675, art 2, Schedule para 2). Nothing in the Magistrates' Courts Act 1980 s 2 (as amended) affects any jurisdiction over offences conferred on a magistrates' court by any enactment not contained in the Magistrates' Courts Act 1980: s 2(7). As to the meaning of 'enactment' see PARA 505 note 16 ante.

5 As to appearance by a legal representative see PARA 725 post.

6 Ie under the Magistrates' Courts Act 1980 s 1(2)(b): see PARA 523 ante.

7 Ibid s 2(2).

8 Ibid s 2(6).

9 The expression 'examining justices', which is not defined for the purposes of the Magistrates' Courts Act 1980, refers to the justices before whom a person is charged with an indictable offence.

10 As to the meaning of 'offence' see PARA 522 note 4 ante.

11 Magistrates' Courts Act 1980 s 2(3) (amended by the Local Government Changes for England (Magistrates' Courts) Regulations 1996, SI 1996/674, Schedule para 2; and the Magistrates' Courts (Wales) (Consequences of Local Government Changes) Order 1996, SI 1996/675, art 2, Schedule para 2).

12 It is subject to the Magistrates' Courts Act 1980 ss 18-22 (as amended) (see PARA 659 et seq post) and any other enactment (in that Act or elsewhere) relating to the mode of trial of offences triable either way: s 2(4). For the meaning of 'offence triable either way' see PARA 653 post. As to the procedure for offences triable either way see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1109 et seq.

13 It is under ibid s 2(3) (as amended): see the text to notes 9-11 supra.

14 Ibid s 2(4).

## UPDATE

### 524 Jurisdiction to deal with criminal matters

TEXT AND NOTES--Replaced. A magistrates' court has jurisdiction to try any summary offence: Magistrates' Courts Act 1980 s 2(1) (s 2 substituted by the Courts Act 2003 s 44). A magistrates' court has jurisdiction under the Crime and Disorder Act 1998 ss 51 (see PARA 543) and 51A (see PARA 654) in respect of any offence committed by a person who appears or is brought before the court: 1980 Act s 2(2) (s 2 as so substituted). Subject to the provisions relating to the mode of trial of offences triable either way (ie ss 18-22) and any other enactment (wherever contained) relating to the mode of trial of offences triable either way, a magistrates' court has jurisdiction to try summarily any offence which is triable either way: s 2(3) (s 2 as so substituted). A magistrates' court has jurisdiction, in the exercise of its powers under s 24 (see PARA 663), to try summarily an indictable offence: s 2(4) (s 2 as so substituted). Section 2 does not affect any jurisdiction over offences conferred on a magistrates' court by any enactment not contained in the 1980 Act: s 2(5) (s 2 as so substituted).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(5) LIMITS OF JURISDICTION/(i) Local Limit/525. Extension of criminal jurisdiction.

### 525. Extension of criminal jurisdiction.

In the following circumstances the jurisdiction of a magistrates' court may extend beyond the commission area<sup>1</sup>.

An offence<sup>2</sup> committed on the boundary of two or more commission areas, or within 500 yards of such a boundary, or in any harbour, river, arm of the sea or other water<sup>3</sup> lying between two or more such areas, may be treated<sup>4</sup> as having been committed in any of those areas<sup>5</sup>. An offence begun in one commission area and completed in another may be treated as having been wholly committed in either<sup>6</sup>.

An offence committed on any person, or on or in respect of any property, in or on a vehicle or vessel<sup>7</sup> engaged on any journey or voyage through two or more commission areas, may be treated as having been committed in any of those areas; and where the side or any part of a road or any water along which the vehicle or vessel passed in the course of the journey or

voyage forms the boundary between two or more areas, the offence may be treated as having been committed in any of those areas<sup>8</sup>.

A person who aids, abets, counsels or procures the commission by another person of a summary offence<sup>9</sup> is guilty of the like offence and may be tried (whether or not he is charged as a principal) either by a court having jurisdiction to try that other person or by a court having by virtue of his own offence jurisdiction to try him<sup>10</sup>.

The jurisdiction of justices whose district is situate on the sea coast is extended to vessels lying or passing off that coast, and to persons on board<sup>11</sup>.

Provision is also made for an enlarged jurisdiction in respect of certain offences against the Army Act 1955<sup>12</sup> and the Air Force Act 1955<sup>13</sup>.

1 As to the court's extended jurisdiction in respect of warrants and other process see PARA 523 ante; and generally as to venue see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 908 et seq. As to commission areas see PARA 507 ante.

2 As to the meaning of 'offence' see PARA 522 note 4 ante.

3 However, without prejudice to the Magistrates' Courts Act 1980 s 3 (as amended), any river or water lying between, or forming the boundary between, two or more petty sessions areas is for the purposes of the Licensing Act 1964 deemed to be in each of those areas: Licensing Act 1964 s 192(2) (amended by the Magistrates' Courts Act 1980 s 154, Sch 7 para 48).

4 As to the purposes of the Magistrates' Courts Act 1980 ss 1, 2 (both as amended): see PARAS 522-524 ante.

5 Ibid s 3(1), (4) (amended by the Magistrates' Courts (Wales) (Consequences of Local Government Changes) Order 1996, SI 1996/675, art 2, Schedule para 2(3)).

6 Magistrates' Courts Act 1980 s 3(2), (4) (as amended: see note 5 supra). See *Kennet District Council v Young* [1999] RTR 235, 163 JP 622, DC (even though accused did not reside within the trial court's area, offence of failing to provide information as to identity of driver had been committed).

7 An offence in respect of property in or on a vehicle or vessel does not include an offence relating simply to the unlawful use of the vehicle or vessel: *AF Wardhaugh Ltd v Mace* [1952] 2 All ER 28, 116 JP 369, DC.

8 Magistrates' Courts Act 1980 s 3(3), (4) (as amended: see note 5 supra).

9 For the meaning of 'summary offence' see PARA 653 post. As to the procedure for offences triable summarily see PARA 681 et seq post.

10 Magistrates' Courts Act 1980 s 44(1). Any offence consisting in aiding, abetting, counselling or procuring the commission of an offence triable either way (other than an offence listed in Sch 1 (see PARA 655 post)) is by virtue of s 44(2) triable either way: s 44(2). For the meaning of 'offence triable either way' see PARA 653 post. As to the procedure for offences triable either way see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1109 et seq. As to aiding and abetting generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 720 et seq.

11 See the Magistrates' Courts Act 1980 s 3A (as added); the Merchant Shipping Act 1995 s 280; and SHIPPING AND MARITIME LAW vol 94 (2008) PARAS 1104-1106. As to the ambit of criminal jurisdiction generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1054 et seq.

12 See the Army Act 1955 s 220.

13 See the Air Force Act 1955 s 218.

## UPDATE

### 525 Extension of criminal jurisdiction

TEXT AND NOTES 2-8--Repealed: Courts Act 2003 Sch 8 para 201, Sch 10.

TEXT AND NOTES 12, 13--Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(5) LIMITS OF JURISDICTION/(i) Local Limit/526. Jurisdiction in civil matters.

## **526. Jurisdiction in civil matters.**

Where no express provision is made by any Act<sup>1</sup> or the rules made under the Magistrates' Courts Act 1980<sup>2</sup> specifying what magistrates' courts<sup>3</sup> have jurisdiction to hear a complaint<sup>4</sup>, a magistrates' court has such jurisdiction if the complaint relates to anything done within the commission area<sup>5</sup> for which the court is appointed or anything left undone there that ought to have been done there, or ought to have been done either there or elsewhere, or relates to any other matter arising within that area<sup>6</sup>.

- 1 'Act' includes local Act: Magistrates' Courts Act 1980 s 150(1).
- 2 ie the rules made under ibid s 144 (as amended) (see PARA 588 post): s 150(1).
- 3 For the meaning of 'magistrates' court' see PARA 583 post.
- 4 As to the hearing of complaints see PARA 681 et seq post.
- 5 As to commission areas see PARA 507 ante.
- 6 Magistrates' Courts Act 1980 s 52 (amended by the Access to Justice Act 1999 s 106, Sch 15 Pt V).

## **UPDATE**

## **526 Jurisdiction in civil matters**

TEXT AND NOTES--Replaced. Subject to provision made by any enactment, a magistrates' court has jurisdiction to hear any complaint: Magistrates' Courts Act 1980 s 52 (substituted by the Courts Act 2003 s 47(2)).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(5) LIMITS OF JURISDICTION/(ii) Jurisdiction outside England and Wales/527. Backing of warrants executed or issued in the Isle of Man and Channel Islands.

## **(ii) Jurisdiction outside England and Wales**

### **527. Backing of warrants executed or issued in the Isle of Man and Channel Islands.**

A warrant<sup>1</sup> issued in England and Wales by a justice of the peace or any judge of Her Majesty's Court of Queens Bench or the Crown Court<sup>2</sup> for execution in the Isle of Man or the Channel Islands must be backed by an officer who is himself empowered to issue such a warrant or similar process in the Isle of Man or the Channel Islands, to enable it to be executed in these respective territories<sup>3</sup>.

Warrants issued in these territories, before being executed in England or Wales, need to be backed by a justice of the peace in the place where they are to be executed<sup>4</sup>. The backing is effected by a signed indorsement authorising the execution of the warrant within the jurisdiction of the justice making the indorsement<sup>5</sup>. Pinning the signed indorsement to the warrant is not enough<sup>6</sup>.

1 The Indictable Offences Act 1848 s 13 (as amended), so far as applicable, applies to:

- 1 (1) warrants of arrest issued under the Magistrates' Courts Act 1980 s 1 (as amended) (see PARAS 522-523 ante) for offences other than those referred to in the Indictable Offences Act 1848 s 13 (as amended) (Magistrates' Courts Act 1980 s 126(a));
- 2 (2) warrants of arrest issued under the Magistrates' Courts Act 1980 s 13 (as amended) (warrant of arrest for non-appearance of accused) (see PARA 693 post) (s 126(b));
- 3 (3) warrants of arrest issued under the Magistrates' Courts Act 1980 s 97 (as amended) (warrant for arrest of witness) (see PARAS 734, 736 post) other than warrants issued in bastardy proceedings to arrest a witness (s 126(c) (amended by the Crime and Disorder Act 1998 ss 119, 120(2), Sch 8 para 45(a), Sch 10));
- 4 (4) warrants of arrest issued under the Magistrates' Courts Act 1980 s 97A (as added and amended) (warrant as to committal proceedings) (see PARA 675 post) (s 126(cc) (added by the Crime and Disorder Act 1998 Sch 8 para 45(b)));
- 5 (5) warrants of commitment issued under the Magistrates' Courts Act 1980 (s 126(d));
- 6 (6) warrants of arrest issued under the Crime and Disorder Act 1998 s 52(6), Sch 3 para 4 (as amended) (procedure where persons are sent for trial under s 51) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1131) (Magistrates' Courts Act 1980 s 126(e) (added by the Crime and Disorder Act 1998 Sch 8 para 45(c))); and
- 7 (7) warrants of arrest issued under the Powers of Criminal Courts (Sentencing) Act 2000 s 28, Sch 1 para 3(2) (offender referred to court by youth offender panel) (Magistrates' Courts Act 1980 s 126(f) (added by the Youth Justice and Criminal Evidence Act 1999 s 67(1), Sch 4 paras 7, 9; and amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 74).

Nothing in the Indictable Offences Act 1848 is deemed or taken to extend to Scotland or Ireland, or to the Isles of Man, Jersey, or Guernsey, save and except the provisions respecting the backing of warrants: see s 32 (amended by the Statute Law Revision Act 1891; the Statute Law (Repeals) Act 1989; and the Courts Act 1971 s 56(4), Sch 11 Pt IV). The provisions of the Magistrates' Courts Act 1980 s 126 (as amended) have the same extent as the Indictable Offences Act 1848 s 13 (as amended): see s 155(4).

2 For the meaning of 'Crown Court' see PARA 508 note 9 ante.

3 See the Indictable Offences Act 1848 s 13 (amended by the Statute Law Revision Act 1891; and the Courts Act 1971 s 56(1), Sch 8 Pt II); the Criminal Justice Administration Act 1851 s 18 (amended by the Statute Law Revision Act 1892); and note 1 supra.

4 See the Indictable Offences Act 1848 s 13; and note 1 supra.

5 See *ibid* s 13; and note 1 supra. For the form of indorsement see s 13 (as amended), Schedule Form K.

6 *R v Metropolitan Police Comr, ex p Melia* [1957] 3 All ER 440, [1957] 1 WLR 1065, DC.

## UPDATE

### 527 Backing of warrants executed or issued in the Isle of Man and Channel Islands

NOTE 1--Magistrates' Courts Act 1980 s 126 amended: Courts Act 2003 Sch 8 para 241.

NOTE 3--Indictable Offences Act 1848 s 13 further amended: 2003 Act Sch 8 para 33, Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(5) LIMITS OF JURISDICTION/(ii) Jurisdiction outside England and Wales/528. Backing of warrants issued or executed in the Republic of Ireland.

### **528. Backing of warrants issued or executed in the Republic of Ireland.**

A warrant of arrest issued by a judicial authority<sup>1</sup> in the Republic of Ireland for the arrest<sup>2</sup> of a person accused or convicted of an offence may be executed in the United Kingdom<sup>3</sup> if indorsed by a justice of the peace<sup>4</sup>. There is a procedure for the issue of a provisional warrant in cases of urgency<sup>5</sup>.

A warrant of arrest issued by a justice of the peace in England or Wales<sup>6</sup> may be executed in the Republic of Ireland if backed by the Commissioner of the Garda Siochana<sup>7</sup>.

1 'Judicial authority' means a court, judge or justice of a court or peace commissioners: Backing of Warrants (Republic of Ireland) Act 1965 s 10(1).

2 The arrest must be for certain purposes only: see *ibid* s 1(3); and EXTRADITION vol 17(2) (Reissue) PARA 1288.

3 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. Neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 3. For the meaning of 'Great Britain' see PARA 519 note 4 *ante*.

4 See the Backing of Warrants (Republic of Ireland) Act 1965 s 1(1) (as amended); and EXTRADITION vol 17(2) (Reissue) PARA 1287. As to the application and procedure after arrest see EXTRADITION vol 17(2) (Reissue) PARA 1288 *et seq*.

5 See *ibid* s 4 (as amended); and EXTRADITION vol 17(2) (Reissue) PARA 1289.

6 As to warrants of arrest see PARA 695 *et seq post*; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 912 *et seq*.

7 See the Extradition Act 1965 (Republic of Ireland).

### **UPDATE**

### **528 Backing of warrants issued or executed in the Republic of Ireland**

TEXT AND NOTES 1-5--1965 Act repealed: Extradition Act 2003 Sch 4.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(5) LIMITS OF JURISDICTION/(ii) Jurisdiction outside England and Wales/529. Service and execution of process: Scotland, Northern Ireland and Isle of Man.

### **529. Service and execution of process: Scotland, Northern Ireland and Isle of Man.**

A warrant issued in Scotland or Northern Ireland for the arrest of a person charged with an offence may be executed without backing in England and Wales<sup>1</sup>, and vice versa, by any constable<sup>2</sup> of any police force of the country of issue or of the country of execution as well as by any persons within the direction of the warrant<sup>3</sup>. These provisions apply as respects: (1) a warrant of commitment and a warrant to arrest a witness issued by a judicial authority<sup>4</sup> in England, Wales or Northern Ireland as they apply to a warrant for arrest<sup>5</sup>; and (2) a warrant for



committal, a warrant to imprison (or to apprehend and imprison) and a warrant to arrest a witness issued by a judicial authority in Scotland as they apply to a warrant for arrest<sup>6</sup>; (3) a warrant issued<sup>7</sup> for the arrest of an offender referred back to the court by a youth offender panel as they apply to a warrant issued in England or Wales for the arrest of a person charged with an offence<sup>8</sup>.

A summons<sup>9</sup> requiring a person charged with an offence to appear before a court in England or Wales may, in such manner as may be prescribed by rules of court<sup>10</sup>, be served on him in Scotland or Northern Ireland<sup>11</sup>. A summons requiring a person charged with an offence to appear before a court in Northern Ireland may, in such manner as may be prescribed by rules of court, be served on him in England, Wales or Scotland<sup>12</sup>. Citation of a person charged with a crime or offence to appear before a court in Scotland may be effected in any other part of the United Kingdom<sup>13</sup> in like manner as it may be done in Scotland, and for this purpose the persons authorised to effect such citation include<sup>14</sup>: (a) in England and Wales and Northern Ireland, constables and prison officers<sup>15</sup> serving in those parts of the United Kingdom<sup>16</sup>; and (b) persons authorised by a chief officer of police<sup>17</sup> in England or Wales to serve summonses there<sup>18</sup>.

Other process issued<sup>19</sup> by a magistrates' court<sup>20</sup> in England may, if indorsed by a court of summary jurisdiction in Scotland, be served and executed within the jurisdiction of the indorsing court<sup>21</sup>.

Process issued by a court of summary jurisdiction in Scotland may be executed in England if indorsed by a magistrates' court in the place where it is to be executed<sup>22</sup>.

Provision has also been made for the service and execution of such process issued in England upon indorsement in the Isle of Man, and the service and execution of such process issued in the Isle of Man upon indorsement in England<sup>23</sup>.

1 For the meaning of 'England' see PARA 501 note 7 ante; and for the meaning of 'Wales' see PARA 501 note 7 ante.

2 As to the office of constable see generally POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

3 See the Criminal Justice and Public Order Act 1994 s 136(1), (2), (3); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 921. A person arrested in pursuance of a warrant must be taken, as soon as reasonably practicable, to any place to which he is committed by, or may be conveyed under, the warrant: s 136(4).

4 'Judicial authority' means any justice of the peace or the judge of any court exercising jurisdiction in criminal proceedings: *ibid* s 136(8).

5 *Ibid* s 136(7)(a).

6 *Ibid* s 136(7)(b).

7 *Ie* under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 1 para 3(2).

8 Criminal Justice and Public Order Act 1994 s 136(7A) (added by the Youth Justice and Criminal Evidence Act 1999 s 67(1), Sch 4 paras 21, 23; and amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 161).

9 As to summonses generally see PARA 687 et seq post.

10 'Rules of Court' in relation to any court means rules made by the authority having power to make rules or orders regulating the practice and procedure of that court; and the power of the authority to make rules of court includes power to make such rules for the purpose of any Act which directs or authorises anything to be done by rules of court: Interpretation Act 1978 s 5, Sch 1.

11 Criminal Law Act 1977 s 39(1). As to service of summons in England and Wales see the Magistrates' Courts Rules 1981, SI 1981/552, r 99; para 690 post; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 914.

- 12 Criminal Law Act 1977 s 39(2).
- 13 For the meaning of 'United Kingdom' see PARA 528 note 3 ante.
- 14 Criminal Law Act 1977 s 39(3).
- 15 As to prison officers see PRISONS vol 36(2) (Reissue) PARA 515 et seq.
- 16 Criminal Law Act 1977 s 39(3)(a) (renumbered by the Criminal Justice (Scotland) Act 1980 s 83(2), Sch 7 para 79).
- 17 As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARA 178 et seq.
- 18 Criminal Law Act 1977 s 39(3)(b) (added by the Criminal Justice (Scotland) Act 1980 s 83(2), Sch 7 para 79).
- 19 Ie under the Magistrates' Courts Act 1980. The Summary Jurisdiction (Process) Act 1881 s 4 refers to the Summary Jurisdiction Acts. These Acts were largely repealed and replaced by the Magistrates' Courts Act 1952 which is now consolidated in the Magistrates' Courts Act 1980. As to the jurisdiction to issue process and deal with charges see ss 1-3 (as amended); and PARAS 522-525 ante. As to the meaning of 'process' see note 21 infra.
- 20 Ie any justice of the peace, any officer or other magistrate having the authority in England or Scotland of a justice of the peace and also, in Scotland, the sheriff: Summary Jurisdiction (Process) Act 1881 s 8. A summons signed by a justices' clerk in England or Wales by virtue of the Justices of the Peace Act 1997 s 45(1) (see PARA 637 post) has effect as if issued by a court of summary jurisdiction: see the Criminal Justice Act 1972 s 51(4).
- 21 See the Summary Jurisdiction (Process) Act 1881 s 4. As to the indorsement in backing a process see s 4, Schedule. The Summary Jurisdiction (Process) Act 1881 does not apply to Ireland (ss 1, 2), and it is in addition to and not in derogation of any power existing under any other Act relating to the execution of any warrant or other process in England and Scotland respectively (s 7).
- Section 4 has been applied to process issued by the Crown Court under the Supreme Court Act 1981 s 80 (s 80(3)), and to process issued under the Powers of Criminal Courts (Sentencing) Act 2000 ss 2(4), 13(1), 104(1), 121(1), 123(1), Sch 1 para 3(2), Sch 3 paras 3(1), 10(7), 24(1), Sch 4 para 6(6), Sch 5 para 1(1), Sch 7 para 7(2), Sch 8 para 6(2) (Powers of Criminal Courts (Sentencing) Act 2000 s 159).
- 'Process' includes a summons or warrant to appear either to answer any information or a complaint, or as a witness; also any warrant of commitment, imprisonment, distress; also any order or minute or copy thereof and any other document or process required to be served or executed: see the Summary Jurisdiction (Process) Act 1881 s 8. Process to answer a complaint for the recovery of a civil debt is excepted: see s 4(4). Indorsement may be upon proof of the handwriting of the person issuing the process, given on oath or by solemn declaration as mentioned in the Summary Jurisdiction Act 1879 s 41 (now repealed) (see now the Magistrates' Courts Rules 1981, SI 1981/552, r 67; and PARA 691 post), or by a like declaration taken in Scotland: see the Summary Jurisdiction (Process) Act 1881 s 4(1). For the form of declaration as to handwriting and seal see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Form 143. See PARA 505 note 12 ante. Where process requiring appearance to answer an information or complaint has been so served, a warrant of arrest for failure to appear must not be issued unless the court is satisfied on oath that there is a prima facie case: see the Summary Jurisdiction (Process) Act 1881 s 4(2). In the case of a witness, the court issuing the process must be satisfied on oath that his evidence will be material, and that he will not attend voluntarily, and the witness is not to be under any liability unless his expenses are tendered: see s 4(3). A person arrested under these provisions must be taken forthwith to some place within the jurisdiction of the court issuing the process and there dealt with as if he had been apprehended there: see s 5.
- 22 See *ibid* ss 4, 8. See *R v Manchester Stipendiary Magistrate, ex p Granada Television Ltd* [2001] 1 AC 300, [2000] 1 All ER 135, HL (indorsement in England under the Summary Jurisdiction (Process) Act 1881 s 4 of search warrant issued in Scotland to search for material in England which included or might have included excluded or special procedure material was not precluded by the Police and Criminal Evidence Act 1984 s 9(2) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 874)).
- 23 Summary Jurisdiction Process (Isle of Man) Order 1928, SR & O 1928/377, applying, subject to adaptations, the Summary Jurisdiction (Process) Act 1881 s 4, Schedule. Power is given to make rules by which the operation of this Act is made applicable as between any one part of the British Isles and any other: see the Criminal Justice Administration Act 1914 s 40(2). Section 40(2) does not extend to Northern Ireland: see s 43(1).

## UPDATE

## **529 Service and execution of process: Scotland, Northern Ireland and Isle of Man**

TEXT AND NOTE 8--Criminal Justice and Public Order Act 1994 s 136(7A) further amended: Criminal Justice and Immigration Act 2008 Sch 4 para 42.

TEXT AND NOTES 9-11--Criminal Law Act 1977 s 39(1) now s 39(1)(a) (s 39(1) substituted by the Criminal Justice Act 2003 Sch 36 para 6). The following documents may also be so served: (1) a written charge (within the meaning of the 2003 Act s 29 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 912, 915) charging a person with an offence, (2) a requisition (within the meaning of s 29) requiring a person charged with an offence to appear before a court in England or Wales, and (3) any other document which, by virtue of any enactment, may or must be served on a person with, or at the same time as, a document mentioned in s 39(1)(a), (b) or (c): s 39(1)(b)-(d) (s 39(1) as so substituted).

NOTE 20--Reference to Justices of the Peace Act 1997 s 45(1) is now to the 2003 Act s 28(1): Criminal Justice Act 1972 s 51(4) (amended by the 2003 Act Sch 8 para 166).

NOTE 21--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Powers of Criminal Courts (Sentencing) Act 2000 s 159 amended: Criminal Justice and Immigration Act 2008 Sch 4 para 59, Sch 28 Pt 1 (partly in force: SI 2009/3074).

SI 1981/553 Sch 2 Form 143 revoked: SI 2003/1236.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(5) LIMITS OF JURISDICTION/(ii) Jurisdiction outside England and Wales/530. Execution in different parts of the United Kingdom of warrants for imprisonment for non-payment of fine.

### **530. Execution in different parts of the United Kingdom of warrants for imprisonment for non-payment of fine.**

A person against whom an extract conviction is issued in Scotland for imprisonment<sup>1</sup> in default of payment of a fine<sup>2</sup> may be arrested<sup>3</sup>: (1) in England and Wales<sup>4</sup>, by any constable<sup>5</sup> acting within his police area<sup>6</sup>; (2) in Northern Ireland, by any member of the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve<sup>7</sup>.

A person against whom there has been issued in England, Wales or Northern Ireland a warrant committing him to prison<sup>8</sup> in default of payment of a sum adjudged to be paid by a conviction<sup>9</sup> may be arrested in Scotland, by any constable appointed for a police area, in like manner as if the warrant were an extract conviction for imprisonment issued in Scotland in default of payment of a fine<sup>10</sup>.

A person so arrested under an extract conviction or under a warrant of commitment may be detained under it in any prison in the part of the United Kingdom<sup>11</sup> in which he was arrested; and while so detained he must be treated for all purposes as if he were detained under a warrant of commitment or extract conviction issued in that part of the United Kingdom<sup>12</sup>. An extract conviction or a warrant of commitment may be executed<sup>13</sup> whether or not it has been indorsed<sup>14</sup>.

The provisions described above do not apply to the arrest of persons under the age of 18 years<sup>15</sup>.

1 'Imprisonment' includes, in the case of a person who is under the age of 21 years, detention: Criminal Law Act 1977 s 38A(5) (s 38A added by the Criminal Justice (Scotland) Act 1980 s 51). As to a person's age see PARA 738 post.

2 'Fine' includes any sum treated by any enactment as a fine for the purposes of its enforcement and any sum to be found as caution: Criminal Law Act 1977 s 38A(5) (as added: see note 1 supra).

3 Ibid s 38A(1) (as added: see note 1 supra) (which is expressed to be subject to s 38A(6) (as added and amended) (see the text to note 15 infra): s 38A(1) (as so added)).

4 For the meaning of 'England' see PARA 501 note 7 ante; and for the meaning of 'Wales' see PARA 501 note 7 ante.

5 As to the office of constable see generally POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

6 Criminal Law Act 1977 s 38A(1)(a) (as added: see note 1 supra). As to police areas see POLICE vol 36(1) (2007 Reissue) PARAS 136-138.

7 Ibid s 38A(1)(b) (as added (see note 1 supra); and amended by the Police (Northern Ireland) Act 2000 s 78(2)(c), (d)).

8 'Prison' means: (1) in the case of a person who is under the age of 21 years arrested in Scotland, a young offenders institution (ibid s 38A(5)(i) (as added: see note 1 supra)); (2) in the case of a person under that age arrested in England and Wales, any place in which he could be detained under the Powers of Criminal Courts (Sentencing) Act 2000 s 108(5) (prospectively repealed) (Criminal Law Act 1977 s 38A(5)(ia) (s 38A as so added; s 38A(5)(ia) added by the Criminal Justice Act 1982 s 77, Sch 14 para 39; and amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 56); and (3) in the case of a person under that age arrested in Northern Ireland, a young offenders centre (Criminal Law Act 1977 s 38A(5)(ii) (as added: see note 1 supra)).

As from a day to be appointed head (2) supra is to provide that 'prison' means in the case of a person under that age arrested in England and Wales, any prison, or any young offender institution in which one or more persons mentioned in the Criminal Justice and Court Services Act 2000 s 61(3), s 61(4) or s 61(5) (not yet in force) are detained, determined by the Secretary of State (in respect of that person or a description of persons including that person): Criminal Law Act 1977 s 38A(5)(ia) (as so added; prospectively substituted by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 Pt II paras 54, 55). At the date at which this volume states the law no such day had been appointed. 'Secretary of State' means one of Her Majesty's Principal Secretaries of State: Interpretation Act 1978 s 5, Sch 1.

9 For the meaning of 'sum adjudged to be paid by a conviction' see PARA 675 note 23 post; definition applied by the Criminal Law Act 1977 s 38A(5) (as added: see note 1 supra).

10 Ibid s 38A(2) (as added: see note 1 supra) (which is expressed to be subject to s 38A(6) (as added and amended) (see the text to note 15 infra): s 38A(2) (as so added)).

11 'Part of the United Kingdom' means England and Wales, Scotland or Northern Ireland: ibid s 38A(5) (as added: see note 1 supra).

12 Ibid s 38A(3) (as added: see note 1 supra).

13 Ie by virtue of ibid s 38A (as added).

14 Ibid s 38A(4) (as added: see note 1 supra). The text refers to indorsement under the Summary Jurisdiction (Process) Act 1881 s 4 or the Petty Sessions (Ireland) Act 1851 s 27 (as amended): see PARA 529 ante.

15 Criminal Law Act 1977 s 38A(6) (amended by the Criminal Justice and Public Order Act 1994 s 168(1), Sch 9 para 14(1)). As to a person's age see PARA 738 post.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(5) LIMITS OF JURISDICTION/(ii) Jurisdiction outside England and Wales/531. Execution of warrants of commitment for non-payment of sum adjudged to be paid by conviction in England and Wales or Northern Ireland.

### **531. Execution of warrants of commitment for non-payment of sum adjudged to be paid by conviction in England and Wales or Northern Ireland.**

A person against whom there has been issued in England and Wales<sup>1</sup> a warrant committing him to prison<sup>2</sup> in default of payment of a sum adjudged to be paid by a conviction<sup>3</sup> may be arrested in Northern Ireland by any member of the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve in like manner as if the warrant were a warrant committing him to prison in default of payment of a sum adjudged to be paid by a conviction in Northern Ireland<sup>4</sup>.

A person against whom there has been issued in Northern Ireland a warrant committing him to prison in default of payment of a sum adjudged to be paid by a conviction may be arrested in England and Wales by any constable<sup>5</sup> acting within his police area<sup>6</sup> in like manner as if the warrant were a warrant committing him to prison in default of payment of a sum adjudged to be paid by a conviction in England and Wales<sup>7</sup>.

A person arrested by virtue of the provisions described above under a warrant of commitment may be detained under it in any prison in the part of the United Kingdom<sup>8</sup> in which he was arrested, and while so detained he is to be treated for all purposes as if he were detained under a warrant of commitment issued in that part of the United Kingdom<sup>9</sup>. A warrant of commitment issued by a court in Northern Ireland may be executed in England and Wales<sup>10</sup> whether or not it has been indorsed<sup>11</sup>.

The provisions described above do not apply to the arrest of persons under the age of 18 years<sup>12</sup>.

1 For the meaning of 'England' see PARA 501 note 7 ante; and for the meaning of 'Wales' see PARA 501 note 7 ante.

2 'Prison' means: (1) in the case of a person who is under the age of 21 years arrested in England and Wales, any place in which he could be detained under the Powers of Criminal Courts (Sentencing) Act 2000 s 108(5) (prospectively repealed) (Criminal Law Act 1977 s 38B(5)(a) (s 38B added by the Criminal Justice Act 1982 s 52; and the Criminal Law Act 1977 s 38B(5)(a) amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 57); and (2) in the case of a person under that age arrested in Northern Ireland, a young offenders centre (Criminal Law Act 1977 s 38B(5)(b) (as so added)).

As from a day to be appointed head (1) supra is to provide that 'prison' means in the case of a person who is under the age of 21 years arrested in England and Wales, any prison, or any young offender institution in which one or more persons mentioned in the Criminal Justice and Court Services Act 2000 s 61(3), s 61(4) or s 61(5) (not yet in force) are detained, determined by the Secretary of State (in respect of that person or a description of persons including that person) (Criminal Law Act 1977 s 38B(5)(a) (s 38B as so added; s 38B(5)(a) prospectively substituted by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 Pt II paras 54, 56). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 530 note 8 ante. As to a person's age see PARA 738 post.

3 'Sum adjudged to be paid by a conviction' has the meaning given by the Magistrates' Courts Act 1980 s 150(3) (see PARA 675 post) or, in Northern Ireland, the Magistrates' Court (Northern Ireland) Order 1981, SI 1981/1675 (NI 26), art 2(5): Criminal Law Act 1977 s 38B(5) (as added: see note 2 supra).

4 Ibid s 38B(1) (as added (see note 2 supra); and amended by the Police (Northern Ireland) Act 2000 s 78(2) (c), (d)) (which is expressed to be subject to the Criminal Law Act 1977 s 38B(6) (as added and amended) (see the text to note 12 infra: s 38B(1) (as so added)). The provisions of the Magistrates' Courts (Northern Ireland) Order 1981, SI 1981/1675 (NI 26), art 158(4), (5) (execution without possession of the warrant and execution on Sunday) apply to the execution in Northern Ireland of any such warrant which has been issued in England and Wales as they apply in relation to the execution of a warrant for arrest: Criminal Law Act 1977 s 38B(1) (as so added).

5 As to the office of constable see generally POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

6 As to police areas see POLICE vol 36(1) (2007 Reissue) PARAS 136-138.

7 Criminal Law Act 1977 s 38B(2) (as added: see note 2 supra) (which is expressed to be subject to s 38B(6) (as added and amended) (see the text to note 12 infra): s 38B(2) (as so added)).

8 'Part of the United Kingdom' means England and Wales or Northern Ireland: *ibid* s 38B(5) (as added: see note 2 supra).

9 *Ibid* s 38B(3) (as added: see note 2 supra).

10 *Ibid* by virtue of *ibid* s 38B (as added).

11 *Ibid* s 38B(4) (as added: see note 2 supra). The text refers to indorsement under the Petty Sessions (Ireland) Act 1851 s 27 (as amended).

12 Criminal Law Act 1977 s 38B(6) (as added (see note 2 supra); and amended by the Criminal Justice and Public Order Act 1994 s 168(1), Sch 9 para 14(2)).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(5) LIMITS OF JURISDICTION/(ii) Jurisdiction outside England and Wales/532. Power of justice to act.

### **532. Power of justice to act.**

A justice before whom a person is brought under any warrant indorsed may then proceed in the same manner as if the person had been arrested within his jurisdiction<sup>1</sup>.

1 See the Indictable Offences Act 1848 s 13; the Summary Jurisdiction (Process) Act 1881 s 5; and PARAS 527-529 ante. Section 5 is repealed as from 31 December 2002, unless the Scottish Ministers by order provide by statutory instrument for this repeal to come into force before that date: see the Abolition of Poindings and Warrant Sales Act 2001 ss 1(1), 4(1).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(5) LIMITS OF JURISDICTION/(ii) Jurisdiction outside England and Wales/533. Warrant for arrest of fugitive.

### **533. Warrant for arrest of fugitive.**

A warrant for the arrest of a person whose return is sought may be issued under the Extradition Act 1989: (1) on receipt of an authority to proceed by the Senior District Judge (Chief Magistrate)<sup>1</sup> or another District Judge (Magistrates' Courts)<sup>2</sup> designated by him<sup>3</sup>; and (2) without such an authority by a justice of the peace in any part of the United Kingdom<sup>4</sup> upon information that the said person is or is believed to be in or on his way to the United Kingdom<sup>5</sup>. A warrant of arrest so issued may, without being backed, be executed in any part of the United Kingdom and may be so executed by any person to whom it is directed or by any constable<sup>6</sup>.

Where a warrant is so issued for the arrest of a person accused of an offence of stealing or receiving stolen property in a designated Commonwealth country<sup>7</sup> or a colony<sup>8</sup> or any other offence committed in such a country or in a colony in respect of property, a justice of the peace in any part of the United Kingdom has the like power to issue a warrant to search for the property as if the offence had been committed within his jurisdiction<sup>9</sup>.

1 As to the appointment and tenure of office of Senior District Judges (Magistrates' Courts) see PARA 574 post.

- 2 As to the appointment and tenure of office of District Judges (Magistrates' Courts) see PARA 573 post.
- 3 See the Extradition Act 1989 s 8(1)(a)(i) (amended by the Access to Justice Act 1999 s 78(2), Sch 11 paras 31, 32); and EXTRADITION vol 17(2) (Reissue) PARA 1187.
- 4 See the Extradition Act 1989 s 8(1)(b)(ii). For the meaning of 'United Kingdom' see PARA 528 note 3 ante.
- 5 See *ibid* s 8(1)(b); and EXTRADITION vol 17(2) (Reissue) PARA 1188. Any warrant issued by virtue of s 8(1)(b) is referred to as a 'provisional warrant': s 8(1)(b).
- 6 See *ibid* s 8(5); and EXTRADITION vol 17(2) (Reissue) PARA 1189. 'Constable' means any person holding the office of constable, not a member of a police force holding the rank of constable. As to the attestation of constables see POLICE vol 36(1) (2007 Reissue) PARAS 102-103; and as to their jurisdiction see POLICE vol 36(1) (2007 Reissue) PARAS 102, 109.
- 7 For the meaning of 'designated Commonwealth country' see EXTRADITION vol 17(2) (Reissue) PARA 1120.
- 8 For the meaning of 'colony' see EXTRADITION vol 17(2) (Reissue) PARA 1106.
- 9 See the Extradition Act 1989 s 8(6); and EXTRADITION vol 17(2) (Reissue) PARA 1187.

## UPDATE

### 533 Warrant for arrest of fugitive

TEXT AND NOTES--1989 Act repealed: Extradition Act 2003 Sch 4.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(6) FUNCTIONS/(i) In general/534. Extent of powers.

## (6) FUNCTIONS

### (i) In general

#### 534. Extent of powers.

Magistrates sit in the magistrates' courts<sup>1</sup> and the Crown Court<sup>2</sup>. They exercise judicial functions in relation to both criminal and civil proceedings<sup>3</sup>.

- 1 As to magistrates' courts generally see PARA 583 et seq post.
- 2 See the Supreme Court Act 1981 s 8. For the meaning of 'Crown Court' see PARA 508 note 9 ante.
- 3 See PARAS 537, 539 post. As to the power of lay magistrates to make delivery and restitution orders see PARA 579 post.

## UPDATE

### 534 Extent of powers

NOTE 2--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(6) FUNCTIONS/(i) In general/535. Administrative functions.

### **535. Administrative functions.**

Justices have administrative functions in respect of a number of matters of which the most notable are liquor licensing<sup>1</sup> and betting and gaming licensing<sup>2</sup>. Justices of the peace are empowered to grant licences for young persons between the ages of 14 and 18 to go abroad for the purpose of singing, playing, performing or being exhibited for profit<sup>3</sup>.

Any justice or justices of the peace acting under any enactment<sup>4</sup> or by virtue of his or their commission or under the common law constitute a magistrates' court for the purposes of the Magistrates' Courts Act 1980<sup>5</sup>. This allows licensing justices<sup>6</sup> and, seemingly, justices exercising any other administrative powers to state a case for the opinion of the High Court<sup>7</sup>.

Justices on the supplemental list may perform certain minor administrative functions<sup>8</sup>.

1 See LICENSING AND GAMBLING vol 67 (2008) PARAS 26, 171.

2 See LICENSING AND GAMBLING vol 67 (2008) PARA 330 et seq.

3 See the Children and Young Persons Act 1933 s 25(2) (as amended); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 777. As to a person's age see PARA 738 post.

4 As to the meaning of 'enactment' see PARA 505 note 16 ante.

5 See the Magistrates' Courts Act 1980 s 148(1); and PARA 583 post.

6 *R v East Riding of Yorkshire Quarter Sessions, ex p Newton* [1968] 1 QB 32, [1967] 3 All ER 118, CA. See *R v Cornwall Quarter Sessions Appeal Committee, ex p Kerley* [1956] 2 All ER 872, [1956] 1 WLR 906, DC where it has been held that a justice condemning food under the Food and Drugs Act 1938 s 10(1) (now repealed), was not acting as a court of summary jurisdiction. However, in that case the Magistrates' Courts Act 1952 s 124(1) (repealed: see now the Magistrates' Courts Act 1980 s 148(1) (see the text to notes 4-5 supra)), was not drawn to the court's attention.

7 As to the statement of a case by a magistrates' court see the Magistrates' Courts Act 1980 s 111; and PARA 885 et seq post.

8 See the Justices of the Peace Act 1997 s 9; and PARA 520 ante.

## **UPDATE**

### **535 Administrative functions**

NOTE 8--Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(6) FUNCTIONS/(i) In general/536. Special sessions.

### **536. Special sessions.**

The administrative functions of justices<sup>1</sup> may be exercised at special sessions. Special sessions are meetings of justices convened for the purpose of executing a statutory authority which is exercisable by justices out of sessions<sup>2</sup>. At the present day the term 'special sessions' is used to describe meetings of justices to exercise administrative as distinct from judicial functions, such



sessions now constituting a magistrates' court<sup>3</sup>. Notice of special sessions is normally required to be given<sup>4</sup>.

There is no general statutory power to adjourn special sessions but justices have an inherent power to regulate their procedure in the interests of a fair and expeditious trial<sup>5</sup>, and this seemingly includes a power to adjourn.

1 As to these functions see PARA 535 ante.

2 I.e. when sitting as a magistrates' court: see the text to note 3 infra; and Wharton's Law Lexicon, s v Sessions.

3 See the Magistrates' Courts Act 1980 s 148; and PARA 583 post.

4 See eg the Licensing Act 1964 s 2 (as amended), Sch 1 para 11 (as amended).

5 See *Simms v Moore* [1970] 2 QB 327 at 331, [1970] 3 All ER 1 at 3, DC, per Lord Parker CJ.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(6) FUNCTIONS/(i) In general/537. Criminal jurisdiction.

### **537. Criminal jurisdiction.**

In regard to criminal matters it is the function of magistrates to conduct the trial of summary offences<sup>1</sup> and of offences triable either way<sup>2</sup> which are not to be tried on indictment<sup>3</sup>, and to act as examining justices<sup>4</sup> with regard to indictable offences<sup>5</sup> which are not to be tried summarily<sup>6</sup>.

1 For the meaning of 'summary offence' see PARA 653 post. As to the procedure for offences triable summarily see PARA 681 et seq post.

2 For the meaning of 'offence triable either way' see PARA 653 post. As to the procedure for offences triable either way see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1109 et seq.

3 As to the procedure for offences triable on indictment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1105 et seq; and as to indictments generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1202 et seq.

4 As to the procedure where magistrates are acting as examining justices see PARAS 668-677 post; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1098 et seq.

5 For the meaning of 'indictable offence' see PARA 653 post.

6 As to the procedure for determining the mode of trial of an offence triable either way see the Magistrates' Courts Act 1980 ss 18-26 (as amended); and PARA 653 et seq post.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(6) FUNCTIONS/(i) In general/538. Summary trial of offences.

### **538. Summary trial of offences.**

A magistrates' court<sup>1</sup> must not (1) try summarily an information<sup>2</sup> for an indictable offence<sup>3</sup> except when sitting in a petty-sessional courthouse<sup>4</sup>; (2) try an information for a summary offence<sup>5</sup> or hold an inquiry into an offender's means<sup>6</sup>, or impose imprisonment<sup>7</sup>, except when sitting either in a petty-sessional courthouse or in an occasional courthouse<sup>8</sup>. Subject to the

provisions of any enactment<sup>9</sup> to the contrary<sup>10</sup>, where a magistrates' court is so required<sup>11</sup> to sit in a petty-sessional or occasional courthouse, it must sit in open court<sup>12</sup>.

A magistrates' court must not try an information summarily except when composed of at least two justices unless the trial is one that by virtue of any enactment may take place before a single justice<sup>13</sup>. A magistrates' court composed of a single justice<sup>14</sup> or sitting in an occasional courthouse may not impose imprisonment for more than 14 days or order a person to pay more than £1<sup>15</sup>, but it may adjourn the trial<sup>16</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 post.

2 As to the laying of informations see PARA 681 et seq post.

3 For the meaning of 'indictable offence' see PARA 653 post. As to the meaning of 'offence' see PARA 522 note 4 ante.

4 Magistrates' Courts Act 1980 s 121(3)(a). For the meaning of 'petty-sessional courthouse' see PARA 584 post. In the application of the Magistrates' Courts Act 1980 to civil contempt proceedings under s 63(3) (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq), where the proceedings are taken of the court's own motion s 121(1) (see the text to note 13 infra), s 121(3)(a) applies as if a complaint had been made against the person against whom the proceedings are taken: Contempt of Court Act 1981 s 17(2), Sch 3 para 1(1).

Nothing in the Magistrates' Courts Act 1980 which requires a magistrates' court to be composed of two or more justices or to sit in a petty sessional courthouse or an occasional courthouse or which limits the powers of a magistrates' court when composed of a single justice or when sitting elsewhere than in a petty sessional courthouse applies to any District Judge (Magistrates' Courts) sitting in a place appointed for the purpose: Justices of the Peace Act 1997 s 10E(1) (s 10E added by the Access to Justice Act 1999 s 78(1)). The Justices of the Peace Act 1997 s 10E(1) (as added) does not apply to the hearing or determination of family proceedings within the meaning of the Magistrates' Courts Act 1980 s 65 (as amended) (see PARA 739 post): Justices of the Peace Act 1997 s 10E(2) (as so added). As to occasional courthouses see PARA 585 post. As to the appointment and tenure of office of District Judges (Magistrates' Courts) see PARA 573 post.

5 For the meaning of 'summary offence' see PARA 653 post. As to the procedure for offences triable summarily see PARA 681 et seq post.

6 Ie for the purposes of the Magistrates' Courts Act 1980 s 82 (as amended): see PARAS 854, 862 post.

7 For the meaning of 'impose imprisonment' see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 6.

8 Magistrates' Courts Act 1980 s 121(3)(b).

9 As to the meaning of 'enactment' see PARA 505 note 16 ante.

10 See eg the Children and Young Persons Act 1933 ss 37(1), 47(2) (both as amended); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARAS 1267, 1281; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1300.

11 Ie by the Magistrates' Courts Act 1980 s 121 (as amended).

12 Magistrates' Courts Act 1980 s 121(4). See *R v Evesham Justices, ex p McDonagh* [1988] QB 553, [1988] 1 All ER 371, DC; *R v Malvern Justices, ex p Evans* [1988] QB 540, [1988] 1 All ER 371, DC; and PARA 586 post.

13 Magistrates' Courts Act 1980 s 121(1). As to the powers of single justices see PARA 540 et seq post.

14 See PARA 544 post.

15 Magistrates' Courts Act 1980 s 121(5).

16 See *ibid* s 10 (as amended); and PARAS 707, 711 post.

## UPDATE

### 538 Summary trial of offences

TEXT AND NOTES 1-8--1980 Act s 121(3) repealed: Courts Act 2003 Sch 8 para 237(2), Sch 10.

NOTE 4--1997 Act s 10E (repealed) replaced by 2003 Act s 26.

TEXT AND NOTES 9-12--1980 Act s 121(4) substituted: 2003 Act Sch 8 para 237(3).

TEXT AND NOTE 15--Words 'or sitting in an occasional courthouse' omitted: 1980 Act s 121(5) (amended by the 2003 Act Sch 8 para 237(4), Sch 10).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(6) FUNCTIONS/(i) In general/539. Civil matters.

### **539. Civil matters.**

Much but by no means all of the civil jurisdiction of magistrates is conducted according to the procedure on complaint<sup>1</sup>. If under any enactment<sup>2</sup> an appeal lies to a magistrates' court<sup>3</sup> against the decision or order of a local authority or other authority, or other body or person, the appeal must be by way of complaint for an order<sup>4</sup>. A magistrates' court may not hear a complaint except when sitting in a petty-sessional courthouse<sup>5</sup>. For this purpose it must generally sit in open court<sup>6</sup>, and must be composed of at least two justices unless the hearing is one that by virtue of any enactment may take place before a single justice<sup>7</sup>.

1 As to the hearing of complaints see PARA 681 et seq post. The principal matters heard on complaint are proceedings under the Dogs Act 1871 (see ANIMALS vol 2 (2008) PARA 911), and the hearing of an appeal where under any enactment (eg the Public Health Act 1936 s 300: see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 129) an appeal lies to a magistrates' court. The most notable civil proceedings which are not begun by complaint are (1) proceedings under the Children Act 1989 (see CHILDREN AND YOUNG PERSONS); (2) proceedings under the Domestic Proceedings and Magistrates' Courts Act 1978 (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 553 et seq); (3) domestic violence applications under the Family Law Act 1996 (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW); and (4) adoption proceedings under the Adoption Act 1976 (see CHILDREN AND YOUNG PERSONS).

2 As to the meaning of 'enactment' see PARA 505 note 16 ante.

3 For the meaning of 'magistrates' court' see PARA 583 post.

4 Magistrates' Courts Rules 1981, SI 1981/552, r 34.

5 Magistrates' Courts Act 1980 s 121(3)(a). For the meaning of 'petty-sessional courthouse' see PARA 584 post. However, a District Judge (Magistrates' Courts) may sit in any place appointed for the purpose of exercising his jurisdiction (except in relation to family proceedings): see PARA 538 note 4 ante.

6 See *ibid* s 121(4). This is subject to the provisions of any enactment to the contrary: see PARA 538 text to notes 9-12 ante.

7 *Ibid* s 121(1).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(6) FUNCTIONS/(ii) Powers of a Single Justice/540. Powers conferred by statute.

### **(ii) Powers of a Single Justice**

#### **540. Powers conferred by statute.**

A single justice, although not invested with the authority of a court composed of two or more justices<sup>1</sup>, has certain powers assigned to him by statute<sup>2</sup>. The following powers of a magistrates' court<sup>3</sup> for any area may be exercised by a single justice of the peace for that area<sup>4</sup>:

- 6 (1) to extend bail or to impose or vary conditions of bail<sup>5</sup>;
- 7 (2) to mark an information as withdrawn<sup>6</sup>;
- 8 (3) to dismiss an information, or to discharge an accused in respect of an information, where no evidence is offered by the prosecution<sup>7</sup>;
- 9 (4) to make an order for the payment of defence costs out of central funds<sup>8</sup>;
- 10 (5) to request a pre-sentence report following a plea of guilty and, for that purpose, to give an indication of the seriousness of the offence<sup>9</sup>;
- 11 (6) to request a medical report and, for that purpose, to remand the accused in custody or on bail<sup>10</sup>;
- 12 (7) to remit an offender to another court for sentence<sup>11</sup>;
- 13 (8) where a person has been granted police bail to appear at a magistrates' court, to appoint an earlier time for his appearance<sup>12</sup>;
- 14 (9) to extend, with the consent of the accused, a custody time limit or an overall time limit<sup>13</sup>;
- 15 (10) where an accused has been convicted of an offence, to order him to produce his driving licence<sup>14</sup>;
- 16 (11) to give a direction prohibiting the publication of matters disclosed or exempted from disclosure in court<sup>15</sup>;
- 17 (12) to give, vary or revoke directions for the conduct of a trial, including directions as to: (a) the timetable for the proceedings<sup>16</sup>; (b) the attendance of the parties<sup>17</sup>; (c) the service of documents (including summaries of any legal arguments relied on by the parties)<sup>18</sup>; (d) the manner in which evidence is to be given<sup>19</sup>; and
- 18 (13) to give, vary or revoke orders for separate or joint trials in the case of two or more accused or two or more informations<sup>20</sup>.

Certain things which are authorised to be done by a single justice of the peace for a petty sessions area may be done by the justices' clerk<sup>21</sup> for that area<sup>22</sup>.

1 See the Magistrates' Courts Act 1980 s 121(1); and PARA 538 ante.

2 See PARA 541 et seq post.

3 For the meaning of 'magistrates' court' see PARA 583 post.

4 Crime and Disorder Act 1998 s 49(1).

5 Ibid s 49(1)(a). See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1167.

6 Ibid s 49(1)(b). As to the laying of informations see PARA 681 et seq post.

7 Ibid s 49(1)(c). See PARA 730 post.

8 Ibid s 49(1)(d). See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2059.

9 Ibid s 49(1)(e).

10 Ibid s 49(1)(f).

11 Ibid s 49(1)(g). See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1130.

12 Ibid s 49(1)(h). See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1177 et seq.

13 Ibid s 49(1)(i). See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1153.

- 14 Ibid s 49(1)(k). See SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 313.
- 15 Ibid s 49(1)(l). See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1300.
- 16 Ibid s 49(1)(m)(i).
- 17 Ibid s 49(1)(m)(ii).
- 18 Ibid s 49(1)(m)(iii).
- 19 Ibid s 49(1)(m)(iv).
- 20 Ibid s 49(1)(n). See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1221 et seq.
- 21 For this purpose, 'justices' clerk' means a clerk to the justices' for a petty sessions area: see the Magistrates' Courts Act 1980 s 144(5) (see PARA 588 post); definition applied by the Crime and Disorder Act 1998 s 49(5). As to petty sessions areas see PARAS 591-592 post. As to justices' clerks see PARA 631 et seq post.
- 22 See PARA 638 post.

Without prejudice to the generality of the Magistrates' Courts Act 1980 s 144(1) (as amended) (rules of procedure) (see PARA 588 post):

- 8 (1) rules under the Magistrates' Courts Act 1980 s 144 (as amended) may, subject to the Crime and Disorder Act 1998 s 49(3) (see heads (a)-(e) infra), provide that any of the things which, by virtue of s 49(1) (as amended) (see the text to notes 1-20 supra), are authorised to be done by a single justice of the peace for any area may, subject to any specified restrictions or conditions, be done by a justices' clerk for that area (Crime and Disorder Act 1998 s 49(2)(a)); and
- 9 (2) rules under the Magistrates' Courts Act 1980 s 144 (as amended) which make such provision as is mentioned in head (1) supra may make different provision for different areas (Crime and Disorder Act 1998 s 49(2)(b)).

Rules under the Magistrates' Courts Act 1980 s 144 (as amended) making such provision as is mentioned in the Crime and Disorder Act 1988 s 49(2) (see heads (1) and (2) supra) must not authorise a justices' clerk:

- 10 (a) without the consent of the prosecutor and the accused to extend bail on conditions other than those (if any) previously imposed, or to impose or vary conditions of bail (s 49(3)(a));
- 11 (b) to give an indication of the seriousness of an offence for the purposes of a pre-sentence report (s 49(3)(b));
- 12 (c) to remand the accused in custody for the purposes of a medical report or, without the consent of the prosecutor and the accused, to remand the accused on bail for those purposes on conditions other than those (if any) previously imposed (s 49(3)(c));
- 13 (d) to give a direction prohibiting the publication of matters disclosed or exempted from disclosure in court (s 49(3)(d)); or
- 14 (e) without the consent of the parties, to give, vary or revoke orders for separate or joint trials in the case of two or more accused or two or more informations (s 49(3)(e)).

Before making any rules under the Magistrates' Courts Act 1980 s 144 (as amended) which make such provision as is mentioned in the Crime and Disorder Act 1998 s 49(2) (see supra) in relation to any area, the Lord Chancellor must consult justices of the peace and justices' clerks for that area: s 49(4). At the date at which this volume states the law no rules had been made under the Magistrates' Courts Act 1980 s 144 (as amended) as extended by the Crime and Disorder Act 1998 s 49 (as amended). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

## UPDATE

### 540 Powers conferred by statute

NOTE 22--Omit head (2); for 'rules under the Magistrates' Courts Act 1980 s 144' (in each place) read 'Criminal Procedure Rules'; for 'Lord Chancellor' read 'Criminal

Procedure Rule Committee': 1998 Act s 49(2)-(4) (amended by the Courts Act 2003 (Consequential Amendments) Order 2004, SI 2004/2035). As to the Criminal Procedure Rule Committee see COURTS vol 10 (Reissue) PARA 577A.2.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(6) FUNCTIONS/(ii) Powers of a Single Justice/541. Power to issue summons, warrant etc.

#### **541. Power to issue summons, warrant etc.**

An information charging any offence may be laid before a single justice<sup>1</sup>, and he may issue a summons<sup>2</sup> based on that information; if the information is in writing and substantiated on oath, he may issue a warrant<sup>3</sup>. Similarly, a complaint<sup>4</sup> may be made to him in any matter within the civil jurisdiction of a magistrates' court<sup>5</sup> and he may issue a summons on it<sup>6</sup>. Although there is no general rule on the point, Acts which authorise the issue of a search warrant or warrant of entry generally empower its issue by a single justice<sup>7</sup>. He may issue a summons for the attendance of witnesses, whether in criminal or in civil proceedings<sup>8</sup>, and, in a criminal proceeding, he may issue a warrant to secure the attendance of a witness where he is satisfied by evidence on oath that it is probable that a summons will not have this effect<sup>9</sup>. The justice who signs and issues the summons or warrant must be the justice who heard the complaint<sup>10</sup>.

The laying of an information or the making of a complaint, other than an information or complaint substantiated on oath, may be done before a justices' clerk for the same petty sessions area as the justice of the peace<sup>11</sup>, and the justices' clerk may issue a summons, including a witness summons<sup>12</sup>. However, a justices' clerk has no power to issue (as opposed to sign) a warrant.

1 As to the laying of informations see PARA 681 et seq post.

2 As to summonses generally see PARA 687 et seq post.

3 See the Magistrates' Courts Act 1980 s 1(1); para 522 ante. A justice of the peace may issue a summons or warrant under s 1 (as amended) (see PARAS 522-523 ante) upon an information being laid before him notwithstanding any enactment requiring the information to be laid before two or more justices: s 1(7). As to the meaning of 'enactment' see PARA 505 note 16 ante. An example of an old enactment which requires an information to be laid before two justices is the Distress for Rent Act 1737 s 4 (as amended): see DISTRESS vol 13 (2007 Reissue) PARA 1066.

4 As to the hearing of complaints see PARA 681 et seq post.

5 For the meaning of 'magistrates' court' see PARA 583 post.

6 See the Magistrates' Courts Act 1980 s 51; and PARA 678 post.

7 See eg the Distress for Rent Act 1737 s 7 (as amended) (see DISTRESS vol 13 (2007 Reissue) PARA 1068); the Sexual Offences Act 1956 ss 42, 43 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (Reissue) PARAS 391, 534); the Obscene Publications Act 1959 s 3 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 751-752); the Betting, Gaming and Lotteries Act 1963 s 51 (as amended); the Scrap Metal Dealers Act 1964 s 6(3) (as amended) (see TRADE AND INDUSTRY vol 97 (2010) PARA 870); the Licensing Act 1964 s 187 (as amended); the Trade Descriptions Act 1968 s 28(3) (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 509); the Firearms Act 1968 s 46(1) (as substituted) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 693); the Theft Act 1968 s 26(1) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 306); the Misuse of Drugs Act 1971 s 23(3) (see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 280); the Criminal Damage Act 1971 s 6(1) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 342); the Control of Pollution Act 1974 s 91(2) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 132); the Salmon and Freshwater Fisheries Act 1975 s 33 (as amended) (see AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 937); the Rent Act 1977 s 124(5) (see LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 933); the Forgery and Counterfeiting Act 1981 ss 7, 24(1)

(see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 352, 550); the Video Recordings Act 1984 s 17(1) (as amended) (see LICENSING AND GAMBLING vol 67 (2008) PARA 291); the Police and Criminal Evidence Act 1984 s 8(1) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 873); the Weights and Measures Act 1985 s 79(3) (see WEIGHTS AND MEASURES vol 50 (2005 Reissue) PARA 27); the Animals (Scientific Procedures) Act 1986 s 25(1) (see ANIMALS vol 2 (2008) PARA 898); the Copyright Designs and Patents Act 1988 s 109(1) (see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 441); the Children Act 1989 s 102(1) (see CHILDREN AND YOUNG PERSONS); the Family Proceedings Courts (Children Act 1989) Rules 1991, SI 1991/1395, r 2(5) (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 207); the Town and Country Planning Act 1990 ss 196B(1), 214C(1) (both as added) (see TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARAS 557, 881); the Food Safety Act 1990 s 32(2) (see FOOD vol 18(2) (Reissue) PARA 261); the Water Resources Act 1991 s 173, Sch 20 para 2 (see WATER AND WATERWAYS vol 101 (2009) PARA 483); the Chemical Weapons Act 1996 s 29(1) (see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 491); and the Finance Act 1996 s 60 (as amended), Sch 5 para 5.

Under the Petroleum (Consolidation) Act 1928 s 18 (as amended), the search warrant must be issued by 'a court of summary jurisdiction', but this is usually interpreted as meaning a single justice acting as such. A single justice may by warrant authorise a gas operator or a public electricity supplier or its employee to enter the premises in pursuance of powers of entry conferred by the enactments relating to gas and electricity: see the Rights of Entry (Gas and Electricity Boards) Act 1954 s 2 (as amended); and FUEL AND ENERGY vol 19(1) (2007 Reissue) PARA 774.

8 See the Magistrates' Courts Act 1980 s 97(1) (as amended); and PARA 734 post. In the application of the Magistrates' Courts Act 1980 to civil contempt proceedings under s 63(3) (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq), where the proceedings are taken of the court's own motion s 97(1) (as amended) applies as if a complaint had been made against the person against whom the proceedings are taken: Contempt of Court Act 1981 s 17(2), Sch 3 para 1(1). Certain proceedings under the Licensing Act 1964 are treated as the hearing of a complaint for the purposes of the Magistrates' Courts Act 1980 s 97 (as amended): see the Licensing Act 1964 s 196A (as added and amended).

A justice may issue a summons (or where satisfied by evidence on oath that a summons will be ineffectual, a warrant) to secure the attendance of a witness at committal proceedings who will not voluntarily make a written statement or produce a document or other material evidence on behalf of the prosecutor: see the Magistrates' Courts Act 1980 s 97A (as added).

9 See *ibid* s 97(2); and PARA 734 post.

10 *Dixon v Wells* (1890) 25 QBD 249, DC.

11 Justices' Clerks Rules 1999, SI 1999/2784, r 2, Schedule para 1. As to justices' clerks see PARA 631 et seq post. As to petty sessions areas see PARAS 591-592 post.

12 *Ibid* Schedule para 2. As to witness summonses see PARA 734 post.

## UPDATE

### 541 Power to issue summons, warrant etc

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 7--Sexual Offences Act 1956 ss 42, 43 repealed: Sexual Offences Act 2003 Sch 6 para 11(a), Sch 7.

NOTES 11, 12--SI 1999/2784 r 3, Schedule paras 1, 2 now Justices' Clerks Rules 2005, SI 2005/545, r 3(1), Schedule paras 1, 2.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(6) FUNCTIONS/(ii) Powers of a Single Justice/542. Power of adjournment of trial; remand.

## **542. Power of adjournment of trial; remand.**

A single justice may act alone in adjourning a trial and in remanding the accused in custody or on bail<sup>1</sup>. He may also act alone in adjourning the hearing of a complaint<sup>2</sup>.

1 See the Magistrates' Courts Act 1980 s 10(1), (4) (as amended), s 128(1) (as amended); and PARAS 707, 711, 716 post. As to bail generally see the Bail Act 1976 s 4 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1169 et seq. As to recognisances and bail see the Magistrates' Courts Rules 1981, SI 1981/552, rr 82-93B (as amended). As to justices' clerks' powers of adjournment and remand see PARA 638 post.

2 See the Magistrates' Courts Act 1980 s 54(1); and PARA 707 post. As to the hearing of complaints see PARA 681 et seq post.

### **UPDATE**

#### **542-543 Power of adjournment of trial; remand, Early administrative hearings**

SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to sending for trial see Pt 12; and as to bail see Pt 19.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(6) FUNCTIONS/(ii) Powers of a Single Justice/543. Early administrative hearings.

## **543. Early administrative hearings.**

The magistrates' court<sup>1</sup> before which a person ('the accused') charged with an offence at a police station appears or is brought for the first time in relation to the charge may, unless he is charged with an offence triable only on indictment<sup>2</sup>, consist of a single justice<sup>3</sup>. At a hearing conducted by a single justice under these provisions, the accused must be asked whether he wishes to be granted a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service and, if he does, the justice must decide whether or not to grant him such a right<sup>4</sup>. At such a hearing the single justice (1) may exercise such of his powers as a single justice as he thinks fit<sup>5</sup>; and (2) on adjourning the hearing, may remand the accused in custody or on bail<sup>6</sup>.

The provisions described above apply in relation to a justices' clerk<sup>7</sup> as they apply in relation to a single justice<sup>8</sup>. However, nothing in head (2) above authorises a justices' clerk to remand the accused in custody or, without the consent of the prosecutor and the accused, to remand the accused on bail on conditions other than those (if any) previously imposed<sup>9</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 post.

2 Where an adult appears or is brought before a magistrates' court charged with an offence triable only on indictment, the magistrates' court must send him forthwith to the Crown Court for trial: Crime and Disorder Act 1998 s 51(1). As to the material to be sent to the crown court where a person is sent for trial pursuant to s 51 see the Magistrates' Courts Act Rules 1981, SI 1981/552, r 11A (added by SI 2000/3361; and amended by SI 2001/610). For the meaning of 'Crown Court' see PARA 508 note 9 ante. As to the procedure for offences triable on indictment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1105 et seq; and as to indictments generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1202 et seq.



3 Crime and Disorder Act 1998 s 50(1). See further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1101.

4 Ibid s 50(2) (amended by the Access to Justice Act 1999 s 24, Sch 4 paras 53, 54). As to the Legal Services Commission and the Criminal Defence Service see LEGAL AID vol 65 (2008) PARAS 17 et seq, 120 et seq.

5 Crime and Disorder Act 1998 s 50(3)(a) (which is expressed to be subject to s 50(2) (see the text to note 4 supra): s 50(3)(a)).

6 Ibid s 50(3)(b). See PARA 542 ante.

7 For the meaning of 'justices' clerk' see PARA 540 note 21 ante. As to justices' clerks see PARA 631 et seq post.

8 Crime and Disorder Act 1998 s 50(4). As to the powers of a single justice conferred by statute see further PARA 540 ante.

9 Ibid s 50(4).

## UPDATE

### **542-543 Power of adjournment of trial; remand, Early administrative hearings**

SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to sending for trial see Pt 12; and as to bail see Pt 19.

### **543 Early administrative hearings**

TEXT AND NOTE 4--At a hearing conducted by a single justice under these provisions the accused must now be asked whether he wishes to be granted a right to representation funded by the Legal Services Commission as part of the Criminal Defence Services: 1998 Act s 50(2) (s 50(2), (2A) substituted, s 50(4A) added, by the Criminal Defence Service (Representation Orders and Consequential Amendments) Regulations 2006, SI 2006/2493). Where the accused wishes to be granted such a right, the Legal Services Commission must decide whether to grant him that right: 1998 Act s 50(2A) (as so substituted). A hearing conducted by a single justice under these provisions may be adjourned to enable the decision under s 50(2A) to be taken, and subsequently resumed by a single justice: s 50(4A) (as so added).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(6) FUNCTIONS/(ii) Powers of a Single Justice/544. Trial by single justice.

### **544. Trial by single justice.**

A magistrates' court<sup>1</sup> composed of a single justice has power to try an information<sup>2</sup> summarily or hear a complaint<sup>3</sup> only if the trial or hearing is one which by virtue of any enactment<sup>4</sup> may take place before a single justice<sup>5</sup>. A magistrates' court composed of a single justice must not, however, impose imprisonment for a period exceeding 14 days or order a person to pay more than £1<sup>6</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 post.

2 As to the laying of informations see PARA 681 et seq post.

3 As to the hearing of complaints see PARA 681 et seq post.

4 As to the meaning of 'enactment' see PARA 505 note 16 ante.

5 See the Magistrates' Courts Act 1980 s 121(1). The Acts which provide for the jurisdiction of a single magistrate are the Vagrancy Act 1824 ss 3, 4 (both as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 833-834); the Game Act 1831 ss 30, 31 (both as amended) (see ANIMALS vol 2 (2008) PARAS 785-789); the Railway Regulation Act 1842 s 17 (as amended); the Town Police Clauses Act 1847 ss 28, 29, 48, 49, 55, 58, 62, 63, 65, 66 (all as variously amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 848) (unless the provisions are in force as part of the Public Health Act 1875: see ss 171, 251 (both as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 848); the Sea Fisheries Act 1868 s 57 (as amended); and the Newspapers, Printers, and Reading Rooms Repeal Act 1869 s 1, Sch 2 (as amended) (see PRESS, PRINTING AND PUBLISHING vol 36(2) (Reissue) PARAS 412-414).

6 Magistrates' Courts Act 1980 s 121(5).

## UPDATE

### 544 Trial by single justice

NOTE 5--Railway Regulation Act 1842 s 17 repealed: Serious Organised Crime and Police Act 2005 Sch 7 para 3, Sch 17 Pt 2.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(6) FUNCTIONS/(ii) Powers of a Single Justice/545. Servicemen absent without leave.

### 545. Servicemen absent without leave.

A magistrates' court composed of a single justice may examine a serviceman who is brought before the court and is alleged to have deserted or be absent without leave, and the court may remand him until he can be delivered into military, air-force or naval custody<sup>1</sup>.

<sup>1</sup> See the Magistrates' Courts Act 1980 s 4(1); the Army Act 1955 s 187 (amended by the Armed Forces Act 1971 s 56(2); the Magistrates' Courts Act 1980 s 154, Sch 7 para 12; and the Armed Forces Discipline Act 2000 s 9(1)(a), (b)); the Air Force Act 1955 s 187 (amended by the Armed Forces Act 1971 s 56(2); the Magistrates' Courts Act 1980 Sch 7 para 13; and the Armed Forces Discipline Act 2000 s 9(2)(a), (b)); and the Naval Discipline Act 1957 s 109 (amended by the Armed Forces Act 1971 s 77(1), Sch 4 Pt I; and the Armed Forces Discipline Act 2000 ss 9(3)(a), (b), (c), 27, Sch 4). See also *Walder v Turner* [1917] 1 KB 39.

## UPDATE

### 545 Servicemen absent without leave

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(6) FUNCTIONS/(ii) Powers of a Single Justice/546. Visiting prisons.

### 546. Visiting prisons.

A justice of the peace for any commission area<sup>1</sup> may at any time visit any prison in that area and any prison in which a prisoner is confined in respect of an offence committed in that area, and may examine the condition of the prison and of the prisoners, and enter in the visitors' book, to be kept by the governor of the prison, any observations on the condition of the prison or any abuses<sup>2</sup>. The prison governor must bring any entry made in the visitors' book to the attention of the visiting committee or the board of visitors at its next visit<sup>3</sup>. This power does not authorise a justice of the peace to communicate with any prisoner except on the subject of his treatment in the prison, or to visit any prisoner under sentence of death<sup>4</sup>.

1 As to commission areas see PARA 507 ante.

2 Prison Act 1952 s 19(1) (amended by the Local Government Act 1972 s 272(1), Sch 30; and the Access to Justice Act 1999 s 76(2), Sch 10 para 21). See also PRISONS vol 36(2) (Reissue) PARA 514.

3 Prison Act 1952 s 19(3).

4 Ibid s 19(2). The death penalty has now been abolished: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 4; PRISONS vol 36(2) (Reissue) PARA 635.

## UPDATE

### 546 Visiting prisons

TEXT AND NOTE 3--1952 Act s 19(3) amended: Offender Management Act 2007 Sch 3 para 6.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(6) FUNCTIONS/(ii) Powers of a Single Justice/547. Condemning unsound food.

### 547. Condemning unsound food.

If it appears to a justice of the peace, on the basis of such evidence as he considers appropriate in the circumstances, that any food<sup>1</sup> fails to comply with food safety requirements, he must condemn the food and order<sup>2</sup>: (1) the food to be destroyed or to be so disposed of as to prevent it from being used for human consumption<sup>3</sup>; and (2) any expenses reasonably incurred in connection with the destruction or disposal to be defrayed by the owner of the food<sup>4</sup>.

1 ie falling to be dealt with by him under the Food Safety Act 1990 s 9: see FOOD vol 18(2) (Reissue) PARA 284.

2 Ibid s 9(6). In making an order condemning food the justice acts in an administrative capacity: *R v Cornwall Quarter Sessions Appeal Committee, ex p Kerley* [1956] 2 All ER 872, [1956] 1 WLR 906, DC.

3 Food Safety Act 1990 s 9(6)(a).

4 Ibid s 9(6)(b).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(6) FUNCTIONS/(ii) Powers of a Single Justice/548. Civil matters.

#### **548. Civil matters.**

A single justice is not empowered to hear a complaint<sup>1</sup> unless given jurisdiction by virtue of any enactment<sup>2</sup>. He may, however, adjourn the hearing<sup>3</sup>.

1 As to the hearing of complaints see PARA 681 et seq post.

2 See the Magistrates' Courts Act 1980 s 121(1); and PARA 539 ante. As to the meaning of 'enactment' see PARA 505 note 16 ante.

3 See ibid s 54(1); and PARA 707 post.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(6) FUNCTIONS/(ii) Powers of a Single Justice/549. Supplemental powers.

#### **549. Supplemental powers.**

There are many statutes, governing both civil and criminal proceedings, which empower a single justice to make various orders in the course of the proceedings<sup>1</sup>. Except where the contrary is expressed or implied, anything required or authorised by the Magistrates' Courts Act 1980 to be done by justices may, where two or more justices are present, be done by one of them on behalf of the others<sup>2</sup>.

1 See eg the Magistrates' Courts Act 1980 s 84(1) (see PARA 864 post); and the Attachment of Earnings Act 1971 ss 9(3)(b), 14(3).

2 Magistrates' Courts Act 1980 s 150(2). As to the matters in relation to which a justices' clerk has the same powers as a single justice see PARA 638 post.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(7) DISQUALIFICATION FOR ACTING AS JUSTICE/550. Disqualification generally.

### **(7) DISQUALIFICATION FOR ACTING AS JUSTICE**

#### **550. Disqualification generally.**

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law<sup>1</sup> in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>2</sup>. A justice may be disqualified for acting as such by: (1) statute<sup>3</sup>; (2) actual bias<sup>4</sup>; (3) interest, whether pecuniary or otherwise<sup>5</sup>; or (4) the appearance of bias<sup>6</sup>. A statutory disqualification is an absolute bar except where statute otherwise provides<sup>7</sup>.

Disqualification for interest is automatic and no further investigation into whether there is a likelihood or suspicion of bias is necessary<sup>8</sup>. Disqualification for interest may be waived by the affected party<sup>9</sup>, but the waiver requires the affected party to have acted freely and in full knowledge of the facts<sup>10</sup>. Magistrates who have an interest should not even appear to form part of a court or place themselves in a position where they could exert any influence<sup>11</sup>. If an interested justice remains upon the bench, his presence there is sufficient to invalidate the proceedings<sup>12</sup>.

1 In the absence of actual or apparent bias, not every breach of the Magistrates' Courts Act 1980 s 66 (as substituted) or s 67 (as amended) (see PARA 603 post), where a magistrate who is not a member of a family panel adjudicates in a family proceedings court, results in the court not being a tribunal 'established by law' in breach of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 134 et seq) or is sufficient to invalidate the decision: see *Tameside Metropolitan Borough Council v Grant* [2002] 2 WLR 376, distinguishing *R v Hertfordshire Justices* (1845) 6 QB 753 and *R v Huggins* [1895] 1 QB 563, DC (where, in both cases, the decisions were invalidated by participation of a justice disqualified for bias).

2 See the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6; and *Locabail (UK) Ltd v Bayfield Properties Ltd* [2000] QB 451 at 471, [2000] 1 All ER 65 at 69, CA, per Lord Bingham of Cornhill CJ giving the judgment of the court. A sheriff appointed by the Secretary of State for Scotland on a one-year temporary basis has no security of tenure and as such is not independent: *Starrs v Procurator Fiscal, Linlithgow* (1999) 8 BHRC 1, Times, 17 November.

3 See PARAS 551-554 post.

4 See PARA 555 post.

5 See PARAS 556-557 post.

6 See PARAS 559-560 post.

7 See eg the Justices of the Peace Act 1997 s 6(4) (see PARA 510 ante), s 66(6) (see PARA 551 post).

8 See *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No 2)* [2000] 1 AC 119 at 132, [1999] 1 All ER 577 at 586, HL, per Lord Browne-Wilkinson.

9 *R v Cheltenham Comrs* (1841) 1 QB 467.

10 *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No 2)* [2000] 1 AC 119 at 132, [1999] 1 All ER 577 at 590, HL, per Lord Browne-Wilkinson. As to waiver of objection see PARA 558 post. It has been said that the proper course for any magistrate with a multiplicity of outside interests, before embarking on a judicial task on the day when he or she is sitting, is to look at the list of cases; if in the list there is a case involving any organisation in which the magistrate is actively employed, then the magistrate ought to disqualify himself or herself, or at all events bring the matter to the parties' attention before the case is opened to see if there is any objection: see *R v Altrincham Justices, ex p Pennington* [1975] QB 549 at 554, [1975] 2 All ER 78 at 82-83, DC, per Lord Widgery CJ; and see further PARAS 556, 560 post.

11 *R v Byles, ex p Hollidge* (1912) 77 JP 40, DC; *R v Suffolk Justices* (1852) 18 QB 416. See further PARA 562 note 3 post.

12 *R v Budden etc Kent Justices* (1896) 60 JP 166, DC. See further PARA 562 note 3 post. The Lord Chancellor has condemned the practice known as 'sitting back' and has expressed the view that magistrates who do not sit as members of a court should remove themselves completely from its vicinity: letter dated 12 January 1967.

## UPDATE

### 550-553 Disqualification for Acting as Justice

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(7) DISQUALIFICATION FOR ACTING AS JUSTICE/551. Disqualifications in certain cases of justices who are members of local authorities.

### **551. Disqualifications in certain cases of justices who are members of local authorities.**

Certain classes of persons are disqualified by statute from acting as justices<sup>1</sup> in specified cases, of which the following are examples<sup>2</sup>.

A justice of the peace who is a member of a local authority<sup>3</sup> must not act as a member of the Crown Court<sup>4</sup> or of a magistrates' court<sup>5</sup> in any proceedings brought by or against, or by way of appeal from a decision of, the authority or any committee<sup>6</sup> or officer of the authority<sup>7</sup> or in the case of a local authority which is operating executive arrangements the executive of that authority or any person acting on behalf of that executive<sup>8</sup>. A justice of the peace who is a member of the Common Council of the City of London must not act as a member of the Crown Court or of a magistrates' court in any proceedings brought by or against, or by way of appeal from a decision of, the Corporation of the City of London or the Common Council of the City of London or any committee or officer<sup>9</sup> of the Corporation or Common Council<sup>10</sup>. However, these provisions do not prevent a justice from acting in any proceedings by reason only of their being brought by a police officer<sup>11</sup>, nor do they invalidate any act by reason only of such disqualification of the person acting<sup>12</sup>.

1 As to disqualification for the office of justice see PARAS 511-512 ante; and as to the entry of a justices' name on the supplemental list see PARA 519 ante.

2 As to the statutory disqualification of licensing justices see the Licensing Act 1964 ss 22(7), 193 (as amended).

3 'Local authority' means:

- 15 (1) a local authority within the meaning of the Local Government Act 1972 or the Local Government (Scotland) Act 1973 (see LOCAL GOVERNMENT vol 69 (2009) PARA 23) (Justices of the Peace Act 1997 s 66(7)(a));
- 16 (2) a police authority established under the Police Act 1996 s 3 (see POLICE vol 36(1) (2007 Reissue) PARA 139) (Justices of the Peace Act 1997 s 66(7)(b));
- 17 (3) the Metropolitan Police Authority (see POLICE vol 36(1) (2007 Reissue) PARAS 137, 147-155, 342) (s 66(7)(bza) (added by the Greater London Authority Act 1999 s 325, Sch 27 para 108));
- 18 (4) the Service Authority for the National Criminal Intelligence Service (see POLICE vol 36(1) (2007 Reissue) PARA 430) (Justices of the Peace Act 1997 s 66(7)(ba) (added by the Police Act 1997 s 134(1), Sch 9 para 92));
- 19 (5) the Service Authority for the National Crime Squad (see POLICE vol 36(1) (2007 Reissue) PARA 430) (Justices of the Peace Act 1997 s 66(7)(bb) (added by the Police Act 1997 Sch 9 para 92));
- 20 (6) a joint authority established by the Local Government Act 1985 Pt IV (ss 23-42) (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 47 et seq) (Justices of the Peace Act 1997 s 66(7)(c));
- 21 (7) the London Fire and Emergency Planning Authority (see FIRE SERVICES vol 18(2) (Reissue) PARA 17; LONDON GOVERNMENT vol 29(2) (Reissue) PARA 217) (s 66(7)(cc) (added by the Greater London Authority Act 1999 s 328, Sch 29 Pt I para 62);
- 22 (8) a housing action trust established under the Housing Act 1988 Pt III (ss 60-92) (as amended) (see HOUSING vol 22 (2006 Reissue) PARAS 319-358) (Justices of the Peace Act 1997 s 66(7)(d));

- 23 (9) the Broads Authority (see WATER AND WATERWAYS vol 101 (2009) PARAS 734-736) (s 66(7)(e)); and
- 24 (10) a national park authority (see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 526) (s 66(7)(f)).

A residuary body established under the Local Government Act 1985 s 57 (see LOCAL GOVERNMENT vol 69 (2009) PARA 17) is to be treated as a local authority for the purposes of the Justices of the Peace Act 1997 s 66 (as amended): Local Government Act 1985 s 57(7), Sch 13 para 13(i) (substituted by the Justices of the Peace Act 1997 s 73(2), Sch 5 para 22(3)). The residuary body for Wales established under the Local Government (Wales) Act 1994 s 39, Sch 13 (see LOCAL GOVERNMENT vol 69 (2009) PARA 18) is to be treated as a local authority for the purposes of the Justices of the Peace Act 1997 s 66 (as amended): Local Government (Wales) Act 1994 Sch 13 para 20(h) (amended by the Justices of the Peace Act 1997 Sch 5 para 35(3)).

4 For the meaning of 'Crown Court' see PARA 508 note 9 ante.

5 For the meaning of 'magistrates' court' see PARA 583 post.

6 Any reference to a committee of a local authority includes a joint committee, joint board, joint authority or other combined body of which that authority is a member or on which it is represented: Justices of the Peace Act 1997 s 66(2)(a).

7 Any reference to an officer of a local authority refers to a person employed or appointed by the local authority or a committee of it in the capacity in which he is employed or appointed to act: *ibid* s 66(2)(b).

8 *Ibid* s 66(1) (amended by the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, arts 1(2), 2(s), 33(a)). For these purposes, 'executive' and 'executive arrangements' have the same meanings as in the Local Government Act 2000 Pt II (ss 10-48) (see LOCAL GOVERNMENT vol 69 (2009) PARA 303 et seq): Justices of the Peace Act 1997 s 66(8) (added by the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, arts 1(2), 2(s), 33(b)). At the date at which this volume states the law, the amendments made by the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, have not been brought into force in relation to Wales.

No disqualification is imposed by what is now the Justices of the Peace Act 1997 s 66(1) (as amended) on a clerk to justices who is a member of a local authority: see *R v Camborne Justices, ex p Pearce* [1955] 1 QB 41, [1954] 2 All ER 850, DC.

The Justices of the Peace Act 1997 s 66 (as amended) applies as if the proceedings in relation to which a justice of the peace is disqualified from acting included: (1) proceedings which by virtue of any provision made by or under the Local Government Act 1985 are continued by or against the authority of which he is a member; and (2) proceedings by way of appeal from any decision which by virtue of any such provision is treated as a decision of that authority or of any committee or officer of that authority within the meaning of the Justices of the Peace Act 1997 s 66(1) (as amended) and s 66(2): Local Government Act 1985 s 99 (amended by the Justices of the Peace Act 1997 s 73(2), Sch 5 para 22(1), (2)).

As to the position of justices who are employees of local authorities see the Lord Chancellor's Department Circular AC (6) 2000 (3 April 2000) 'Conflicts of Interest -- Local Authority Councillors and Local Authority Employees'.

9 'Officer' includes the holder of any place, situation or employment, and 'office' is to be construed accordingly: Justices of the Peace Act 1997 s 72(1).

10 *Ibid* s 66(3). As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 51-55.

11 *Ibid* s 66(5).

12 *Ibid* s 66(6).

## UPDATE

### 550-553 Disqualification for Acting as Justice

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

## **551 Disqualifications in certain cases of justices who are members of local authorities**

TEXT AND NOTES--Replaced by Courts Act 2003 s 41 (amended by the Serious Organised Crime and Police Act 2005 Sch 4 para 192; Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 118).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(7) DISQUALIFICATION FOR ACTING AS JUSTICE/552. Justices not disqualified by reason of liability to local taxation.

### **552. Justices not disqualified by reason of liability to local taxation.**

A justice of the peace is not disqualified from acting in cases arising under certain Acts<sup>1</sup> by reason only of his being as one of several ratepayers, or as one of any other class of persons, liable in common with the others to contribute to or be benefited by, any rate or fund out of which any expenses of a council are to be defrayed<sup>2</sup>. A justice of the peace may perform any act in the execution of his office as such a justice in relation to the laws concerning:

- 19 (1) rates leviable by a rating authority<sup>3</sup>;
- 20 (2) community charges of a charging authority<sup>4</sup>;
- 21 (3) council tax set by a billing authority<sup>5</sup>; or
- 22 (4) the non-domestic rate of a special authority<sup>6</sup>,

even though he is rated to or chargeable with any rates falling within head (1) above or is liable, or would but for any enactment or anything provided or done under any enactment be liable, to pay an amount in respect of any charge, tax or rate falling within heads (2) to (4) above in the area affected by the act in question<sup>7</sup>.

1    Ie the Public Health Act 1936 (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 1 et seq; ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 576 et seq); the Slaughterhouses Act 1974 (see FOOD vol 18(2) (Reissue) PARA 470 et seq); the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended) (see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1433 et seq); and the Public Health (Control of Disease) Act 1984 (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 884 et seq).

2    See the Public Health Act 1936 s 304; the Slaughterhouses Act 1974 s 32; the Local Government (Miscellaneous Provisions) Act 1976 s 78; and the Public Health (Control of Disease) Act 1984 s 68. See also *Ex p Pettitmangin* (1864) 28 JP 87. As to the statutory disqualification of justices who are members of a local authority for acting in proceedings to which the authority is a party see PARA 551 ante.

3    Justices of the Peace Act 1997 s 67(a). As to rates generally see RATING AND COUNCIL TAX.

4    Ibid s 67(b). Community charge has been abolished and replaced with council tax: see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 227.

5    Ibid s 67(c). As to council tax see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 227 et seq.

6    Ibid s 67(d). The special authority referred to in the text is a special authority within the meaning of the Local Government Finance Act 1988 s 144(6) (as amended): see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 60. As to non-domestic rating see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 3 et seq.

7    Justices of the Peace Act 1997 s 67.

## **UPDATE**



## **550-553 Disqualification for Acting as Justice**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(7) DISQUALIFICATION FOR ACTING AS JUSTICE/553. Disqualification by bankruptcy or crime.

### **553. Disqualification by bankruptcy or crime.**

A bankrupt is disqualified for acting as a justice of the peace<sup>1</sup>, and if a magistrate is convicted of treason<sup>2</sup> or reported by an election court as personally guilty of any corrupt practice at a parliamentary or municipal election his office is vacated<sup>3</sup>.

1 Justices of the Peace Act 1997 s 65(1). See further PARA 512 ante.

2 See the Forfeiture Act 1870 s 2 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1818. As to treason see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 363 et seq.

3 See the Representation of the People Act 1983 s 161 (amended by the Representation of the People Act 1985 ss 24, 28, Sch 4 para 53, Sch 5); and the *Royal Commission on Justices of the Peace* (Cmd 7463) (1948) PARA 125. See further ELECTIONS AND REFERENDUMS vol 15(4) (2007 Reissue) PARA 900.

## **UPDATE**

## **550-553 Disqualification for Acting as Justice**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

### **553 Disqualification by bankruptcy or crime**

TEXT AND NOTE 1--1997 Act s 65 repealed: Enterprise Act 2002 s 265.

NOTE 3--1983 Act s 161 further amended: Constitutional Reform Act 2005 Sch 4 para 149.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(7) DISQUALIFICATION FOR ACTING AS JUSTICE/554. Restriction on sitting after dealing with bail.

### **554. Restriction on sitting after dealing with bail.**

A justice of the peace must not take part in trying the issue of an accused's guilt on the summary trial of an information<sup>1</sup> if in the course of the same proceedings the justice has been informed, for the purpose of determining whether the accused is to be granted bail, that he has one or more previous convictions<sup>2</sup>. For these purposes, any committal proceedings from which the proceedings on the summary trial arose are treated as part of the trial<sup>3</sup>.

- 1 As to the laying of informations see PARA 681 et seq post.
- 2 Magistrates' Courts Act 1980 s 42(1). As to bail see PARA 718 post; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1165 et seq.
- 3 Ibid s 42(2).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(7) DISQUALIFICATION FOR ACTING AS JUSTICE/555. Actual bias.

### 555. Actual bias.

It is difficult to establish actual bias as a judge or justice may not be questioned about extraneous influences affecting his mind, but parties who can discharge the lesser burden of proving apparent bias<sup>1</sup> are protected without being required to show that actual bias exists<sup>2</sup>.

- 1 As to apparent bias see PARAS 559-560 post.
- 2 *Locabail (UK) Ltd v Bayfield Properties Ltd* [2000] QB 451 at 471-472, [2000] 1 All ER 65, at 70, CA, per Lord Bingham CJ giving the judgment of the court.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(7) DISQUALIFICATION FOR ACTING AS JUSTICE/556. Disqualification by pecuniary or proprietary interest.

### 556. Disqualification by pecuniary or proprietary interest.

The principle that no one may be a judge in his own cause<sup>1</sup> disqualifies a justice who is a party to the cause or has a relevant interest in its subject matter without any investigation into whether there is a real possibility of bias<sup>2</sup>. A direct pecuniary interest however small<sup>3</sup>, subject to any statutory authority to the contrary<sup>4</sup>, or a proprietary interest in the outcome of the case is sufficient to disqualify the justice from acting<sup>5</sup>. The interest, if pecuniary, need not be confined to the justice himself to preclude his acting. Membership of a company<sup>6</sup> or association<sup>7</sup> which is interested is a bar, as also is a bare liability to costs where the decision itself would involve no pecuniary loss<sup>8</sup>.

- 1 In proceedings where a justice is a party or in which he has an interest in the outcome: *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No 2)* [2000] 1 AC 119, [1999] 1 All ER 577, HL.
- 2 *Dimes v Grand Junction Canal Proprietors* (1852) 3 HL Cas 759; *R v Farrant* (1887) 20 QBD 58, DC. See *R v LCC, ex p Akkersdyk, ex p Fermenia* [1892] 1 QB 190, DC; *R v LCC, Re Empire Theatre* (1894) 71 LT 638, DC; *Leeson v General Council of Medical Education and Registration* (1889) 43 ChD 366, CA; *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750, CA; *R v Altrincham Justices, ex p Pennington* [1975] QB 549, [1975] 2 All ER 78, DC; *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No 2)* [2000] 1 AC 119, [1999] 1 All ER 577, HL; *Locabail (UK) Ltd v Bayfield Properties Ltd* [2000] QB 451, [2000] 1 All ER 65, CA; *Re Medicaments and Related Classes of Goods (No 2)* [2001] 1 WLR 700, sub nom *Director General of Fair Trading v The Proprietary Association of Great Britain* [2000] All ER (D) 2425, CA. The test for determining whether there is apparent bias has been reformulated in *Porter v Magill* [2001] UKHL 67, [2002] 1 All ER 465, HL (the test to be applied is whether there is a 'real possibility' rather than a 'real danger' or 'real likelihood' of bias). As to the rule against bias see JUDICIAL REVIEW vol 61 (2010) PARA 631 et seq.

Licensing justices may, however, be both objectors and judges, and the standard laid down in such cases as *Leeson v General Council of Medical Education and Registration* supra and *Allinson v General Council of Medical*

*Education and Registration* supra is not applicable to them: *R v Howard etc, Farnham Licensing Justices* [1902] 2 KB 363 at 377, CA, per Collins MR. See *Frome United Breweries Co Ltd v Bath Justices* [1926] AC 586, HL; *R v Crown Court at Bristol, ex p Cooper* [1990] 2 All ER 193, [1990] 1 WLR 1031, CA, but see *R (on the application of Smith) v Crown Court at Lincoln* (2001) 165 JP Jo 914, DC. As to licensing justices see LICENSING AND GAMBLING vol 67 (2008) PARA 26.

3 There is a de minimis exception provided the potential effect of any decision on the judge's personal interest is so small as to be incapable of affecting his decision one way or the other but any doubt will be resolved in favour of disqualification: *Locabail (UK) Ltd v Bayfield Properties Ltd* [2000] QB 451, [2000] 1 All ER 65, CA.

4 As to the effect of pecuniary interest as ratepayers see PARA 552 ante.

5 *R v Camborne Justices, ex p Pearce* [1955] 1 QB 41, [1954] 2 All 850. See *R v Hammond* (1863) 9 LT 423; *Dimes v Grand Junction Canal Proprietors* (1852) 3 HL Cas 759; *R v Cambridge Recorder* (1857) 8 E & B 637; *R v Rand* (1886) LR 1 QB 230; *R v Farrant* (1887) 20 QBD 58, DC; *R v Hertfordshire Justices* (1845) 6 QB 753. Justices who were members of a county council and heard the rating appeal of a tramway company, to whom the county council had leased the tramways, were not disqualified, as they were mere trustees for the ratepayers: see *R v Middlesex Justices, ex p Hendon Union Assessment Committee* (1908) 72 JP 251, DC. See also PARA 552 ante.

6 *R v Hammond* (1863) 9 LT 423; *Wakefield Local Board of Health v West Riding and Grimsby Rly Co* (1865) LR 1 QB 84. See *R v Storks* (1857) 29 LTOS 107. The fact that justices were shareholders in shipping companies whose ships were insured by an association which was a member of another association of which one of the parties was agent was considered to be too remote to constitute a disqualifying interest: *R v McKenzie* [1892] 2 QB 519, DC.

7 See *R v Henley* [1892] 1 QB 504, DC; *R v Allan* (1864) 4 B & S 915. The ground for disqualification in those cases is now contained in the Salmon and Freshwater Fisheries Act 1975 s 37, Sch 4 para 4: see AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 929. See also *R v Pwllheli Justices, ex p Soane* [1948] 2 All ER 815, DC, explained in *R v Caernarvon Licensing Justices, ex p Benson* (1948) 113 JP 23, DC.

8 *R v Rand* (1866) LR 1 QB 230 at 232 per Blackburn J. See *R v Surrey Justices* (1855) 26 LTOS 89; *R v Burton, ex p Young* [1897] 2 QB 468, DC.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(7) DISQUALIFICATION FOR ACTING AS JUSTICE/557.  
Disqualification by non pecuniary interest.

### 557. Disqualification by non pecuniary interest.

Exceptionally, automatic disqualification for interest<sup>1</sup> will apply where the decision of the judge or justice will lead to the promotion of a cause in which the judge or justice is involved together with one of the parties<sup>2</sup>.

1 As to automatic disqualification for interest see PARA 550 ante.

2 *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No 2)* [2000] 1 AC 119, [1999] 1 All ER 577, HL, setting aside *R v Bow Street Stipendiary Magistrate, ex p Pinochet Ugarte (Amnesty International intervening)* [2000] 1 AC 61, [1998] 4 All ER 897, HL, where the connection between the appeal judge and the intervening party was of such a nature that he could not be seen to be impartial and therefore had to be disqualified; the decision had to be set aside, and the matter remitted to a differently constituted committee. For the subsequent decision see *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No 3)(Amnesty International intervening)* [2000] 1 AC 147, [1999] 2 All ER 97, HL. As to the rule against bias see JUDICIAL REVIEW vol 61 (2010) PARA 631 et seq.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(7) DISQUALIFICATION FOR ACTING AS JUSTICE/558. Waiver of objection.

### 558. Waiver of objection.

If the fact that a justice is interested in the subject matter of a case is known to the parties, and objection to his acting is waived<sup>1</sup> either by their requesting him to act or by their acquiescing in his acting<sup>2</sup>, the proceedings are not rendered void<sup>3</sup>, and where the objection is thus waived at the hearing it cannot afterwards be raised<sup>4</sup>. A party does not waive his right to take an objection when he does not know that he is entitled to it<sup>5</sup>.

1 Any waiver must be clear and unequivocal, and made with full knowledge of all the facts relevant to the decision whether to waive or not: *Locabail (UK) Ltd v Bayfield Properties Ltd* [2000] QB 451 at 475, [2000] 1 All ER 65 at 73, CA. Where a justice who was a shareholder in a company took part in the decision of an appeal by the company, it was held that the objection was not waived by the knowledge of the respondent's legal representative and his not objecting: *R v Cambridgeshire Justices, ex p Steeple Morden Overseers* (1855) 25 LTOS 128. There cannot be a waiver when full disclosure of the justice's interest has not been made: *R v Cumberland Justices, ex p Midland Rly Co* (1888) 58 LT 491, DC. Evidence leading to a presumption of waiver may be rebutted by proof that the party was prevented by surprise from taking the objection before the justices, either by reason of their improper conduct or neglect of the essentials of justice: *R (Harrington) v Clare County Court Judge and County Justices* [1918] 2 IR 116.

2 *Ex p Ilchester Parish* (1861) 25 JP 56.

3 *Wakefield Local Board of Health v West Riding and Grimsby Rly Co* (1865) LR 1 QB 84. As to the classes of persons disqualified by statute from acting as justices in specified cases see PARA 551 ante. It would appear that where a class of persons is definitely excluded from acting, a waiver of the objection would not make the proceedings valid. Where, however, an Act contains a provision that 'the justices' means the justices of the place where the matter requiring the cognisance of such justices arises and who are not interested in the matter (see eg the Railways Clauses Consolidation Act 1845 s 3 (as amended); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 343), it has been held that the phrase is merely declaratory of the common law, and that the objection may be waived: *Wakefield Local Board of Health v West Riding and Grimsby Rly Co* supra. See the definition of 'justice' in the Companies Clauses Consolidation Act 1845 s 3 (as amended) (COMPANIES vol 15 (2009) PARA 1670).

4 *R v Byles, ex p Hollidge* (1912) 108 LT 270, DC; *Wakefield Local Board of Health v West Riding and Grimsby Rly Co* (1865) LR 1 QB 84; *R v Cheltenham Comrs* (1841) 1 QB 467; *R (Giants' Causeway etc Tramway Co) v Antrim County Justices* [1895] 2 IR 603. In order to obtain a quashing order (formerly termed 'orders of certiorari') to quash a conviction on the ground of interest or bias, the party should show on his affidavits that neither he nor his advocate knew of the objection at the time of the hearing (*R v Williams, ex p Phillips* [1914] 1 KB 608, DC; *R v Richmond, Surrey Justices* (1860) 2 LT 373; *R v Kent Justices* (1880) 44 JP 298), and that acquiescence cannot be inferred from his conduct (*Ex p Ilchester Parish* (1861) 25 JP 56). As to quashing orders see JUDICIAL REVIEW vol 61 (2010) PARA 693 et seq.

5 *R v Essex Justices, ex p Perkins* [1927] 2 KB 475, DC; *R v Richmond Justices* (1860) 24 JP 422; *R v Kent Justices* (1880) 44 JP 298; *R v Cumberland Justices, ex p Midland Rly Co* (1888) 58 LT 491, DC. An advocate is under no duty to put fishing questions to members of a bench for the purpose of ascertaining whether there is a disqualification where he suspects the existence of a disqualification but has no knowledge of the facts giving rise to it: *R v Barnsley County Borough Licensing Justices, ex p Barnsley and District Licensed Victuallers Association* [1959] 2 QB 276 at 284, [1959] 2 All ER 635 at 640, DC; affd on another point [1960] 2 QB 167, [1960] 2 All ER 703, CA, per Lord Parker CJ.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(7) DISQUALIFICATION FOR ACTING AS JUSTICE/559. Distinction between interest and apparent bias.

### 559. Distinction between interest and apparent bias.

A distinction must be drawn between pecuniary interest and prejudice. The fundamental principle that a man may not be a judge in his own cause has two implications: (1) where a judge is in fact a party to the litigation or has a financial or proprietary interest in its outcome this is sufficient to cause his automatic disqualification<sup>1</sup>; (2) where a judge or justice is not a party to the proceedings and does not have a financial interest in its outcome, but in some other way his conduct or behaviour gives rise to a suspicion that he is not impartial, there may be apparent bias<sup>2</sup>.

1 *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No 2)* [2000] 1 AC 119 at 132-133, [1999] 1 All ER 577 at 586, HL, per Lord Browne-Wilkinson. As to the test of disqualification by interest see PARAS 556-557 ante.

2 *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No 2)* [2000] 1 AC 119 at 132-133, [1999] 1 All ER 577 at 586, HL, per Lord Browne-Wilkinson. As to the test of disqualification by apparent bias see PARA 560 post.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(7) DISQUALIFICATION FOR ACTING AS JUSTICE/560. Test of disqualification by apparent bias.

## **560. Test of disqualification by apparent bias.**

The test applicable in all cases of apparent bias<sup>1</sup>, whether concerned with justices, members of inferior tribunals, jurors or with arbitrators, is whether, having regard to the relevant circumstances, there is a real possibility of bias on the part of the relevant member of the tribunal in question, in the sense that he might unfairly regard with favour, or disfavour, the case of a party to the issue under consideration by him<sup>2</sup>. In considering this question all the circumstances which have a bearing on the suggestion that the judge or justice is biased must be considered<sup>3</sup>. The question is whether a fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased<sup>4</sup>. Cases may occur where all the justices may be affected by an appearance of bias, as, for instance, where a fellow justice or the justices' clerk is charged with an offence; where this occurs, it has been recommended that justices from another petty-sessionals<sup>5</sup> division should deal with the case<sup>6</sup>, or, if the offence is indictable, that it should be committed for trial by a jury<sup>7</sup>.

It is because the court in the majority of cases does not inquire whether actual bias exists<sup>8</sup> that the maxim that justice must not only be done but be seen to be done<sup>9</sup> is applied, and the court gives effect to the maxim by examining all the material available and concluding whether there is a real possibility of bias<sup>10</sup>. There is no rule of law that a magistrate who knows the past record of a defendant should not try him and, although this is not desirable<sup>11</sup>, a magistrate is not deprived of jurisdiction<sup>12</sup>. The test for deciding whether justices who have discovered that an accused has previous convictions should be discharged is whether there is a real possibility of bias<sup>13</sup>. In the case of an ordinary public interest immunity application the same court which has considered the application should where possible proceed to conduct the trial and the discretion to order the case to be tried before another bench should only be exercised in exceptional cases<sup>14</sup>. Where a justice has, as a member of a local authority, an interest not expressly sanctioned by statute, the test is whether, in the circumstances of the particular case, there is any real possibility of bias<sup>15</sup>. The same rule applies where the justice is a member of a society which is a party to or is interested in the result of the proceedings<sup>16</sup>. Accordingly, a justice is disqualified if he belongs to a privileged class, to protect whose interests the proceedings are brought<sup>17</sup>.

Almost any kind of association between a magistrate and the victim of an offence, whether the victim is a private individual or a public body, is likely to disqualify<sup>18</sup>, but such an association must be distinguished from a formal and perhaps nominal connection between a magistrate adjudicating and the prosecutor which by itself would not be a disqualifying factor<sup>19</sup>. Mere subscription to the funds of a society which is a party to proceedings<sup>20</sup> or to a fund to have the case properly presented, does not involve disqualification<sup>21</sup>, nor does an expression of opinion, if not made in view of the particular proceedings<sup>22</sup>. A justice is not disqualified by the fact that one of the parties to a dispute is a member of the same trade union as the justice, where no industrial dispute is involved<sup>23</sup>. It would seem that relationship to one of the parties does not of itself lead to disqualification<sup>24</sup>.

It has been held that a justice who has no interest in the proceedings is not precluded from acting by being subpoenaed as a witness at the hearing<sup>25</sup>, nor by his having suggested a settlement out of court in a case where he had been in relation with the parties<sup>26</sup>.

1 As to the distinction between interest and apparent bias see PARA 559 ante.

2 *R v Gough* [1993] AC 646 at 669, [1993] 2 All ER 724 at 737-738, HL, per Lord Goff of Chieveley; *Porter v Magill* [2001] UKHL 67 at [103], [2002] 1 All ER 465 at [103], HL, per Lord Hope of Craighead. Prior to the decision in *R v Gough* supra, there had been a divergence of opinion whether the test for apparent bias was the 'real danger or possibility' test (since reformulated as the 'real possibility' test in *Porter v Magill* supra) or one of a reasonable suspicion or apprehension of bias. However, following the decision in *Re Medicaments and Related Classes of Goods (No 2)* [2001] 1 WLR 700, sub nom *Director General of Fair Trading v The Proprietary Association of Great Britain* [2000] All ER (D) 2425, CA, the difference between the two tests in practice may only be a narrow one. Nevertheless, authorities decided on the 'reasonable suspicion or apprehension of bias' test should be read in this light.

3 See *Re Medicaments and Related Classes of Goods (No 2)* [2001] 1 WLR 700, sub nom *Director General of Fair Trading v The Proprietary Association of Great Britain* [2000] All ER (D) 2425, CA.

4 *Re Medicaments and Related Classes of Goods (No 2)* [2001] 1 WLR 700, sub nom *Director General of Fair Trading v The Proprietary Association of Great Britain* [2000] All ER (D) 2425, CA; *Porter v Magill* [2001] UKHL 67 at [103], [2002] 1 All ER 465 at [103], HL, per Lord Hope of Craighead. The Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6(1) (right to fair trial) requires consideration whether, apart from a judge or magistrate's personal conduct, there are ascertainable facts which may raise doubts as to his impartiality, and, while not determinative, the standpoint of the defendant is important in this assessment: *Hauschild v Denmark* (1989) 12 EHRR 266. As to the right to a fair trial under the Convention for the Protection of Human Rights and Fundamental Freedoms see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 134-147. See also the Lord Chancellor's Department Circular AC 2001 (14) (7 August 2001) 'ECHR -- Article 6 and Civil Servants Sitting as Lay Magistrates'; and the Lord Chancellor's Department Circular AC (1) 2002 (7 January 2002) 'ECHR -- Article 6 and Civil Servants Sitting as Lay Magistrates'.

In considering whether there is a real danger of bias on the part of a judge, everything depends on the facts, which may include the nature of the issue to be decided. However, a judge's religion, ethnic or national origin, gender, age, class, means or sexual orientation cannot form a sound basis of an objection. 'Nor, at any rate ordinarily, could an objection be soundly based on the judge's social or educational or service or employment background or history, nor that of any member of the judge's family; or previous political associations; or membership of social or sporting or charitable bodies; or Masonic associations; or previous judicial decisions; or extra-curricular utterances (whether in textbooks, lectures, speeches, articles, interviews, reports or responses to consultation papers); or previous receipt of instructions to act for or against any party, solicitor or advocate engaged in a case before him; or membership of the same Inn, circuit, local Law Society or chambers. By contrast, a real danger of bias might well be thought to arise if there were personal friendship or animosity between the judge and any member of the public involved in the case; or if the judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or if, in a case where the credibility of any individual were an issue to be decided by the judge, he had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion; or if on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind; or if, for any other reason, there were real ground for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues before him. The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would

not without more found a sustainable objection': *Locabail (UK) Ltd v Bayfield Properties* [2000] QB 451 at 480, [2000] 1 All ER 65 at 77-78, CA.

5 As to petty sessions see PARA 591 et seq post.

6 See the Report of an Inquiry by Lord Justice Tucker into Proceedings at the Hearing of Two Informations on April 24 1946, by Justices of the Aberayron Division of the County of Cardigan (1947) (Cmd 7061).

7 See *Afford v Pettit* (1949) 113 JP 433, DC.

8 As to actual bias see PARA 555 ante.

9 *R v Sussex Justices, ex p McCarthy* [1924] 1 KB 256 at 259, DC, per Lord Hewart CJ; *Hill v Tothill* [1936] WN 126, DC; *R v Bodmin Justices, ex p McEwen* [1947] KB 321, [1947] 1 All ER 109, DC; *R v East Kerrier Justices, ex p Mundy* [1952] 2 QB 719, [1952] 2 All ER 144, DC. This is not a warrant for quashing convictions or invalidating orders upon quite unsubstantial grounds or flimsy pretexts of bias: *R v Camborne Justices, ex p Pearce* [1955] 1 QB 41, [1954] 2 All ER 850, DC.

10 *R v Gough* [1993] AC 646 at 673, [1993] 2 All ER 724 at 740, HL, per Lord Woolf; *Porter v Magill* [2001] UKHL 67, [2002] 1 All ER 465, HL; and see the text and note 2 supra. See also *R v Sussex Justices, ex p McCarthy* [1924] 1 KB 256; and Lord Woolf's comments on that case in *R v Gough* supra at 739.

As to the position of licensing justices who are required to be fully apprised of the licensing situation within their division and who may participate in policy-making and have local knowledge of premises see *R v Crown Court at Bristol, ex p Cooper* [1990] 2 All ER 193, [1990] 1 WLR 1031. The Crown Court Rules 1982, SI 1982/1109, r 3(2), which requires the Crown Court when hearing liquor licensing appeals to include two licensing justices from the petty sessions area in which the premises concerned are situated, does not comply with the requirement of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969), art 6(1) (independent and impartial tribunal): *R (on the application of Smith) v Lincoln Crown Court* (2001) 165 JP Jo 914, DC. As to the right to a fair trial by an independent and impartial tribunal see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 134. Justices who are councillors of a local authority are strongly discouraged by the Lord Chancellor from becoming members of licensing committees and if appointed must disclose their potential interest: the Lord Chancellor's Department Circular AC (6) 2000 (3 April 2000) 'Conflicts of Interest -- Local Authority Councillors and Local Authority Employees'.

11 See *Re B (TA) (An Infant)* [1971] Ch 270, [1970] 3 All ER 705; *R v Metropolitan Stipendiary Magistrate, ex p Gallagher* (1972) 136 JP Jo 80, sub nom *Ex p X and Y* (1972) Times, 19 January, DC. A justice who becomes aware during a trial of the defendant's previous convictions should disclose that fact forthwith: *R v Birmingham Magistrates' Court, ex p Robinson* (1985) 150 JP 1. However, a justice who has heard of the defendant's previous convictions on a bail hearing is barred absolutely: see PARA 554 ante. Justices who have heard application for legal aid which includes information as to previous convictions should also not sit on a subsequent trial: *R v Blyth Valley Juvenile Court, ex p S* (1987) 151 JP 805.

12 *R v Metropolitan Stipendiary Magistrate, ex p Gallagher* (1972) 136 JP Jo 80, sub nom *Ex p X and Y* (1972) Times, 19 January, DC. It is not improper for justices to have a court sheet setting out all outstanding charges against a defendant that day but it may be undesirable for unrelated charges to be listed together: *R v Weston-Super-Mare Justices, ex p Shaw* [1987] QB 640, [1987] 1 All ER 255, DC, not following *R v Liverpool Justices, ex p Topping* [1983] 1 All ER 490, [1983] 1 WLR 119, DC. See *R v Hereford Magistrates' Court, ex p Rowlands* [1998] QB 110, [1997] 2 WLR 854, DC (disclosure of pending charges to be distinguished from disclosure of previous convictions).

13 *Johnson v Leicestershire Constabulary* (1998) Times, 7 October, DC, applying *R v Gough* [1993] AC 646, [1993] 2 All ER 724, HL; *Porter v Magill* [2001] UKHL 67, [2002] 1 All ER 465, HL; and see the text and note 2 supra. In assessing whether there is a real danger of bias it must be borne in mind that lay justices as well as judges are trained to put out of their mind matters that are irrelevant: *Johnson v Leicestershire Constabulary* supra. See *R v Downham Market Magistrates' Court, ex p Nudd* [1989] RTR 169, (1988) 152 JP 511 (trial of defendant who has appeared frequently before the local bench).

14 *R v Norfolk Stipendiary Magistrate, ex p Taylor* (1997) 161 JP 773, DC.

15 *R v Sunderland Justices* [1901] 2 KB 357, CA. See now *Porter v Magill* [2001] UKHL 67, [2001] 1 All ER 465, HL; and the text and note 2 supra. Where the interest is remote it has in many cases been decided that there is no real likelihood of bias: see *Leeds Corp'n v Ryder* [1907] AC 420, HL; *R v Stockport Justices* (1896) 60 JP 552, DC, which was, however, disapproved in *R v Sunderland Justices* supra; *R v Tempest* (1902) 66 JP 472, DC; *R v Middlesex Justices, ex p Hendon Union Assessment Committee* (1908) 72 JP 251, DC; *R v Burnley Recorder, ex p New Empire (Burnley) Ltd* [1940] 2 All ER 412, DC. As to the position of justices who are local authority employees see the Lord Chancellor's Department Circular AC (6) 2000 (3 April 2000) 'Conflicts of Interest -- Local Authority Councillors and Local Authority Employees'.

16 *R v Burton, ex p Young* [1897] 2 QB 468, DC (proceedings had been taken by the council of the Law Society against a solicitor, and one of the justices, who was a member of that society, though not of the council, was held not to be disqualified from acting). See *R v Mayor and Justices of Deal, ex p Curling* (1881) 45 LT 439, DC; *Leeson v General Council of Medical Education and Registration* (1889) 43 ChD 366, CA; *Allison v General Council of Medical Education and Registration* [1894] 1 QB 750, CA; *R v Allan* (1864) 4 B & S 915. Where a justice, who was the secretary of a branch of the Order of Rechabites, and who had signed a declaration to use every lawful means for preventing the sale of intoxicating liquor, sat as a member of the compensation authority and voted against the renewal of an old on-licence, which was refused by a majority, it was held that bias was so probable that he ought not to have taken part: *R v Halifax Justices, ex p Robinson* (1912) 76 JP 233, CA.

17 *R v Huggins* [1895] 1 QB 563 (licensed pilot disqualified from hearing charges under the Merchant Shipping Act against an unqualified pilot).

18 See eg *R v Altrincham Justices, ex p Pennington* [1975] QB 549, [1975] 2 All ER 78, DC (conviction of persons in a magistrates' court for delivering under-weight vegetables to a school was quashed as the presiding chairman was a member of the county council's education committee). See also *R v Cambridge Justices, ex p Yardline Ltd and Bird* [1990] Crim LR 733 (it was wrong for a magistrate who was a consultant to a firm employed on a fairly substantial basis by a local authority to sit on a prosecution brought by the local authority without first declaring an interest).

19 See *R v Altrincham Justices, ex p Pennington* [1975] QB 549 at 555, [1975] 2 All ER 78 at 83, DC, per Lord Widgery CJ.

20 *Goodall v Bilsland* 1909 SC 1152. See also *R v Mayor and Justices of Deal, ex p Curling* (1881) 45 LT 439, DC. In Ireland this principle has been extended to the length that a justice may subscribe to a temperance association and even assent to its opposing, or retaining a solicitor to oppose, a licensing application, without becoming thereby disqualified from sitting to hear and determine the application: *R (Findlater) v Dublin Recorder and Justices* [1904] 2 IR 75. However, see *R v Fraser* (1893) 57 JP Jo 500, DC (where a justice who attended a temperance meeting at which allusion was made to a licensing application, but who left the meeting before a resolution was passed to oppose the application, was held to be disqualified from acting); and *R v Caernarvon Licensing Justices, ex p Benson* (1948) 113 JP 23, DC (where, in similar circumstances, a justice was held to be disqualified).

21 *Ex p Chamberlain, R v Norfolk Justices* (1870) 34 JP Jo 773.

22 Thus, a justice was held not to be disqualified, although in an affidavit in civil proceedings he had expressed an opinion adverse to the claim of a party in a matter in respect of which he sat to hear and determine a summons (*R v Alcock, ex p Chilton* (1878) 37 LT 829, DC); and where a justice signed a petition in favour of the grant of a licence to a grocer and, in order to constitute a quorum, was unexpectedly called on to sit to hear the application in a petty-sessional division in which he did not usually sit, his doing so was held not to disqualify him (*R v Taylor etc Justices and Laidler, ex p Vogwill* (1898) 14 TLR 185, DC). The justices were not disqualified by attending a meeting at the request of the police to discuss certain complaints on which they afterwards adjudicated: *R v Powell etc Truro Justices* (1884) 48 JP 740, DC. Where, however, a justice tried to influence other justices not to grant a provisional licence, and subsequently voted against its confirmation, a rule nisi to quash the decision was granted: *R v Ferguson* (1890) 54 JP Jo 101, DC.

23 *Stevens v Stevens* (1929) 93 JP 120.

24 *R (Murray and Wortley) v Armagh County Justices* (1915) 49 ILT 56; *Brookes v Earl of Rivers* (1668) Hard 503. However, see *R v Rand* (1866) LR 1 QB 230.

25 *R v Tooke* (1884) 48 JP 661, DC; and see *R (Donnelly) v Tyrone County Justices* (1910) 44 ILT 264; *R v Farrant* (1887) 20 QBD 58, DC. If, however, a justice contemplates being a witness he ought to make up his mind before the proceedings commence; he ought not to fluctuate between the judicial character and the character of a witness: *Mitchell v Croydon Justices* (1914) 78 JP 385 at 387, DC, per Avory J. As to judges or magistrates acting as witnesses see CIVIL PROCEDURE vol 11 (2009) PARA 967.

26 *R v Farrant* (1887) 20 QBD 58, DC. See, however, *Cottle v Cottle* [1939] 2 All ER 535, DC (domestic proceedings).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(7) DISQUALIFICATION FOR ACTING AS JUSTICE/561. Acting under express statutory authority.



### 561. Acting under express statutory authority.

The question of bias may arise if a justice who is a member of a public body acts as a justice in determining cases arising out of the action of that body<sup>1</sup>. There may, however, be express statutory permission for the justice to act in both capacities<sup>2</sup>, in which case it is not sufficient for a party who alleges bias to show that the justice has, as a member of the public body, a special interest in the result, but it must be established that he has such an interest in the result that it is likely that he has a real bias<sup>3</sup>. Nevertheless, where the justice makes himself a party to proceedings as by associating himself with their institution, he is thereby disqualified, whether statutory permission to act exists or not<sup>4</sup>.

1 For example, the Lord Chancellor takes the view that a magistrate's function as a member of a youth court panel is not compatible with membership of a social services committee of a local authority: see 32 The Magistrate, January 1976, p 2. As to membership of an education authority where a school has been the victim of the offence to be tried see *R v Altrincham Justices, ex p Pennington* [1975] QB 549, [1975] 2 All ER 78, DC; and PARA 260 note 18 ante.

2 See eg the Licensing Act 1964 s 114, s 130.

3 See *R v Handsley* (1881) 8 QBD 383, DC (private Act containing a clause similar to the Public Health Act 1936 s 304 (see PARA 552 ante)). The similar case of *R v Gibbon* (1880) 6 QBD 168, DC, in which there was an opposite decision, was cited and disapproved in *R v Handsley* supra.

4 *R v Henley* [1892] 1 QB 504, DC; *R v Spedding etc Justices* (1885) 2 TLR 163, DC; *R v Lee* (1882) 9 QBD 394, DC; *R v Milledge* (1879) 4 QBD 332, DC; *R v Allan* (1864) 4 B & S 915; *R v Griffiths* (1900) Times, 18 May (member of a school board); *R v Winchester Justices* (1882) 46 JP Jo 724, DC. See *R v Cumberland Justices* (1878) 42 JP 361, DC; *R v LCC, ex p Akkersdyk, ex p Fermentia* [1892] 1 QB 190, DC; *Frome United Breweries Co Ltd v Bath Justices* [1926] AC 586, HL; *R v Gaisford* [1892] 1 QB 381, DC; *R v Nailsworth Licensing Justices, ex p Bird* [1953] 2 All ER 652, [1953] 1 WLR 1046, DC; *R v Sheffield Confirming Authority, ex p Truswell's Brewery Co Ltd* [1937] 4 All ER 114, DC.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(7) DISQUALIFICATION FOR ACTING AS JUSTICE/562.  
Allegations of bias.

### 562. Allegations of bias.

Allegations of bias should not be lightly made<sup>1</sup>, but if any reasonably probable ground for alleging bias exists a justice should not act and, if present, should withdraw from the bench during the hearing<sup>2</sup>. The mere presence on the bench of an interested magistrate, whether he takes any part in the hearing or not, renders the proceedings irregular<sup>3</sup> and consequently voidable<sup>4</sup>. If the information has been dismissed, judicial review<sup>5</sup> to quash the proceedings will not be granted<sup>6</sup>. If it is shown, however, that the findings of the justices were perverse, the High Court will reverse those findings on appeal by way of case stated<sup>7</sup>.

1 *Leeds Corpn v Ryder* [1907] AC 420 at 423, HL, per Lord Loreburn LC. It is not enough to allege that a justice has strong views upon the subject in relation to which he is sitting to hear a case (*Ex p Wilder* (1902) 66 JP 761, DC); some proof of bias is required (*R (Taverner) v Tyrone County Justices* [1909] 2 IR 763; *R v Sparks etc Surrey Justices* (1909) 73 JP 485, DC).

2 *R v Suffolk Justices* (1852) 18 QB 416; *Ex p Steeple Morden Overseers* (1855) 19 JP 292; *R v Surrey Justices* (1855) 26 LTOS 89; *R v Glamorganshire Justices* (1857) 21 JP 773. See *R (Donoghue) v County Cork Justices* [1910] 2 IR 271.

3 *R v Meyer* (1875) 1 QBD 173; *R v Lancashire Justices* (1906) 75 LJKB 198, DC; *R v Byles, ex p Hollidge* (1912) 77 JP 40, DC. See *R v LCC, ex p Akkersdyk, ex p Fermentia* [1892] 1 QB 190, DC; *R v LCC, Re Empire Theatre* (1894) 71 LT 638 at 639, DC, per Charles J; *Frome United Breweries Co Ltd v Bath Justices* [1926] AC 586, HL; *Cottle v Cottle* [1939] 2 All ER 535, DC. An interested magistrate present in the court should not interfere in any way that may create a suspicion that the decision is influenced by his presence or interference: *R v Suffolk Justices* (1852) 18 QB 416 at 421, per Wightman J. As to the presence of interested magistrates' see PARA 550 ante.

Where a justice who was chairman of a county council sat next to the solicitor representing the prosecution during the hearing of a summons against a defendant for breach of a byelaw, and received and replied to a communication from the justices on the bench, an order of certiorari was refused (but without costs) on proof that the communication could not have influenced the decision: *R v Budden etc Kent Justices* (1896) 60 JP 166, DC. See *R v London Justices* (1852) 18 QB 421. Orders of certiorari are now termed quashing orders: see JUDICIAL REVIEW vol 61 (2010) PARA 693 et seq.

In Ireland, a conviction was quashed where a justice who was the chairman of a linen trade association whose inspector was the prosecutor remained in court although he took no part in the proceedings: *R (Uprichard) v Armagh County Justices* (1913) 47 ILT 84. Where an interested justice takes part in the proceedings, it is no answer to an objection that there was a majority without reckoning his vote: see *R v Hertfordshire Justices* (1845) 6 QB 753; and see *R v LCC, Re Empire Theatre* (1894), supra.

4 As to the proceedings being voidable and not void see *Dimes v Grand Junction Canal Proprietors* (1852) 3 HL Cas 759; and *R (Hastings) v Galway Justices* [1906] 2 IR 499.

5 As to judicial review see JUDICIAL REVIEW.

6 *R v Simpson* [1914] 1 KB 66, DC, in which case, however, the justice was under a statutory disqualification against acting, unless with the consent of parties.

7 *Afford v Pettit* (1949) 113 JP 433, DC.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(8) REMUNERATION AND ALLOWANCES/563. Remuneration of justices and time off from employment.

## **(8) REMUNERATION AND ALLOWANCES**

### **563. Remuneration of justices and time off from employment.**

Justices, other than District Judges (Magistrates' Courts)<sup>1</sup>, are unpaid for their services<sup>2</sup> as such but they are entitled to travel, subsistence and financial loss allowances in respect of expenditure incurred in the performance of their duties<sup>3</sup>. An employer must permit an employee who is a justice of the peace to take time off during working hours at times and for periods which are reasonable in all the circumstances for the purpose of performing his duties<sup>4</sup>.

1 As to the appointment and tenure of office of District Judges (Magistrates' Courts) see PARA 573 post.

2 As to the salary of District Judges (Magistrates' Courts) see PARA 576 post.

3 See PARA 564 post.

4 See the Employment Rights Act 1996 s 50(1), (4); and EMPLOYMENT vol 39 (2009) PARA 312.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(8) REMUNERATION AND ALLOWANCES/564. Right to and liability for allowances.

#### 564. Right to and liability for allowances.

A justice of the peace is entitled to: (1) receive payments by way of travelling or subsistence allowance where expenditure on travelling or subsistence is necessarily incurred by him to enable him to perform any of his duties as a justice<sup>1</sup>; and (2) receive payments by way of financial loss allowance where for that performance he incurs any other expenditure to which he would not otherwise be subject or he suffers any loss of earnings or of benefit under the social security legislation which he would otherwise have made or received<sup>2</sup>. A justice following a training course<sup>3</sup> under a scheme made in accordance with arrangements approved by the Lord Chancellor<sup>4</sup> or a training course provided by the Lord Chancellor is acting in the performance of his duties as a justice<sup>5</sup>.

Allowances payable in respect of duties as a justice in the Crown Court<sup>6</sup> are paid by the Lord Chancellor<sup>7</sup>, and in respect of other duties as a justice for any commission area<sup>8</sup> by the appropriate authority<sup>9</sup>. Where an allowance is payable jointly by two or more appropriate authorities<sup>10</sup>, the manner in which it is to be borne by each of them must be determined by agreement between them or, in default of agreement, by the Lord Chancellor<sup>11</sup>.

A justice is not entitled to any payment under these provisions if in respect of those duties a payment of a like nature may be paid to him under other arrangements<sup>12</sup> or in cases excluded by regulations<sup>13</sup>, and a District Judge (Magistrates' Courts)<sup>14</sup> is not entitled to any payment under these provisions in respect of his duties as such<sup>15</sup>.

Regulations<sup>16</sup> may make provision as to the manner in which travelling, subsistence and financial loss allowances<sup>17</sup> are to be administered, and in particular for: (a) prescribing the forms to be used and the particulars to be provided for the purpose of claiming payment of allowances<sup>18</sup>; and (b) avoiding duplication between payments under these provisions and under other arrangements where expenditure is incurred for more than one purpose, and otherwise for preventing abuses<sup>19</sup>. Allowances payable under these provisions must be paid at rates determined by the Lord Chancellor with the consent of the Treasury<sup>20</sup>.

1 Justices of the Peace Act 1997 s 10(1)(a).

2 Ibid s 10(1)(b).

3 As to training courses for justices see PARA 516 ante.

4 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

5 Justices of the Peace Act 1997 s 10(2).

6 For the meaning of 'Crown Court' see PARA 508 note 9 ante.

7 See the Justices of the Peace Act 1997 s 10(6)(a).

8 As to commission areas see PARA 507 ante.

9 See the Justices of the Peace Act 1997 s 10(6)(b). For this purpose the 'appropriate authority' means in relation to a justice for a commission area consisting wholly or partly of Greater London, the Greater London Magistrates' Courts Authority, and in relation to any other justice: (1) the council of the local government area which consists of or includes the petty sessions area for which he acts (s 10(7)(a) (s 10(7) amended by the Access to Justice Act 1999 ss 76(2), 83(3), Sch 10 paras 47, 49, Sch 12 paras 9, 10)); or (2) where he acts for a petty sessions area which is partly included in two or more local government areas, the councils of those local government areas (Justices of the Peace Act 1997 s 10(7)(b) (as so amended)). As to the Greater London Magistrates' Courts Authority see PARA 616 post. As to petty sessions areas see PARAS 591-592 post.

For this purpose 'local government area' means in relation to England, a metropolitan district, a non-metropolitan county for which there is a council or a unitary district, and in relation to Wales, a county or a county borough: s 10(8) (substituted by the Access to Justice Act 1999 s 76(2), Sch 10 paras 47, 49; and amended by s 106, Sch 15 Pt V). For the meaning of 'England' see PARA 501 note 7 ante; and for the meaning of 'Wales' see PARA 501 note 7 ante. 'Unitary district' means a district comprised in an area for which there is no

county council: Justices of the Peace Act 1997 s 72(1). In any enactment relating to justices of the peace, magistrates' courts, justices' clerks or matters connected therewith, including, except to the extent that it otherwise expressly provides, any such enactment passed after 19 March 1997 (ie the passing of the Justices of the Peace Act 1997): (1) any reference to a county is to be taken to include the City of London; and (2) any reference to a county council is to be taken to include the Corporation of the City acting through the Common Council: see s 70 (amended by the Access to Justice Act 1999 s 106, Sch 15 Pt V). As to justices' clerks see PARA 631 et seq post. As to the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 31; as to the Corporation of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 40 et seq; and as the Common Council for the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 51-55. As to areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARAS 24 et seq, 37 et seq.

10 le by virtue of the Justices of the Peace Act 1997 s 10(7)(b) (as amended): see note 9 supra.

11 Ibid s 10(9).

12 le arrangements made apart from under ibid s 10 (as amended).

13 Ibid s 10(3).

14 As to the appointment and tenure of office of District Judges (Magistrates' Courts) see PARA 573 post.

15 Justices of the Peace Act 1997 s 10(4) (amended by the Access to Justice Act 1999 s 78(2), Sch 11 paras 43, 46). As to the salary of District Judges (Magistrates' Courts) see PARA 576 post.

16 Regulations for the purposes of the Justices of the Peace Act 1997 s 10 (as amended) are made by the Lord Chancellor by statutory instrument (s 10(11)), and such regulations are subject to annulment in pursuance of a resolution of either House of Parliament (s 10(12)). At the date at which this volume states the law no such regulations had been made under s 10 (as amended), but by virtue of s 73(1), Sch 4 para 1(2), the Justices' Allowances Regulations 1976, SI 1976/117 (amended by SI 1985/1383) have effect as if made under the Justices of the Peace Act 1997 s 10 (as amended). The Justices' Allowances Regulations 1976, SI 1976/117 (as amended) may be varied by Home Office Circulars.

17 le under the Justices of the Peace Act 1997 s 10 (as amended).

18 Ibid s 10(10)(a).

19 Ibid s 10(10)(b).

20 Ibid s 10(5). As to the allowances see the Justices' Allowances Regulations 1976, SI 1976/117 (as amended). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

## UPDATE

### 564 Right to and liability for allowances

TEXT AND NOTES--Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. As to lay justices' allowances, see now s 15 (amended by Constitutional Reform Act 2005 Sch 4 para 317).

The Lord Chancellor's functions under the 1997 Act s 10 (repealed with savings) are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(9) LIABILITY, PROTECTION AND INDEMNITY/(i) Liability and Protection/565. Justices and justices' clerks acting within their jurisdiction.

## (9) LIABILITY, PROTECTION AND INDEMNITY

## **(i) Liability and Protection**

### **565. Justices and justices' clerks acting within their jurisdiction.**

No claim lies<sup>1</sup> against any justice of the peace or justices' clerk<sup>2</sup> in respect of any act or omission of his in the execution of his duty<sup>3</sup> and with respect to any matter within his jurisdiction<sup>4</sup>.

1 As to the setting aside of a claim that is brought in circumstances in which the Justices of the Peace Act 1997 Pt V (ss 51-54) (as amended) provides that no claim is to lie see PARA 567 post.

2 As to the appointment and qualification of justices' clerks see PARA 631 et seq post. 'Justices' clerk' in this context includes any person appointed by a magistrates' courts committee to assist a justices' clerk: *ibid* s 51(2) (added by the Access to Justice Act 1999 s 100). As to magistrates' courts committees see PARA 612 et seq post.

3 *Ie* in the case of a justice, in the execution of his duty as such a justice (Justices of the Peace Act 1997 s 51(1)(a)(i) (s 51(1) renumbered by the Access to Justice Act 1999 s 100)) or, in the case of a justices' clerk, in the execution of his duty as such a clerk exercising, by virtue of any statutory provision, any of the functions of a single justice (Justices of the Peace Act 1997 s 51(1)(a)(ii) (as so renumbered)).

4 *Ibid* s 51(1)(b) (as renumbered: see note 3 *supra*). As to justices and justices' clerks acting beyond their jurisdiction see PARA 566 post. As to judicial privilege see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 197 et seq.

## **UPDATE**

### **565-568 Justices and justices' clerks acting within their jurisdiction ... Immunity from costs**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

### **565 Justices and justices' clerks acting within their jurisdiction**

TEXT AND NOTES--Replaced by Courts Act 2003 s 31.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(9) LIABILITY, PROTECTION AND INDEMNITY/(i) Liability and Protection/566. Justices and justices' clerks acting beyond jurisdiction.

### **566. Justices and justices' clerks acting beyond jurisdiction.**

A claim lies against any justice of the peace or justices' clerk<sup>1</sup> in respect of any act or omission of his in the purported execution of his duty<sup>2</sup> but with respect to a matter which is not within his jurisdiction<sup>3</sup>, if, but only if, it is proved that he acted in bad faith<sup>4</sup>.

1 As to the appointment and qualification of justices' clerks see PARA 631 et seq post. 'Justices' clerk' in this context includes any person appointed by a magistrates' courts committee to assist a justices' clerk: Justices of the Peace Act 1997 s 52(2) (added by the Access to Justice Act 1999 s 100). As to magistrates' courts committees see PARA 612 et seq post.

2 *Ie* in the case of a justice, in the purported execution of his duty as such a justice (Justices of the Peace Act 1997 s 52(1)(a)(i) (s 52(1) renumbered by the Access to Justice Act 1999 s 100)) or, in the case of a justices'

clerk, in the purported execution of his duty as such a clerk exercising, by virtue of any statutory provision, any of the functions of a single justice (Justices of the Peace Act 1997 s 52(1)(a)(ii) (as so renumbered)).

3 Ibid s 52(1)(b) (as renumbered: see note 2 supra). Former provisions relating to the liability of justices referred to liability for acts done 'without' or 'in excess of' jurisdiction (see eg the Justices Protection Act 1848 s 2 (repealed by the Justices of the Peace Act 1979 s 71(2)(b), Sch 3); and the Justices of the Peace Act 1979 s 45 (repealed by the Justices of the Peace Act 1997 s 73(3), Sch 6 Pt 1; and replaced by s 53 thereof)). A court acted 'in excess of' jurisdiction where, although having jurisdiction to try the matter, it proceeded to do something which it could not do if it stayed within the limits prescribed by the law under which it was to exercise its jurisdiction. Liability for acts done 'not within' jurisdiction would now seem to embrace both acts done without jurisdiction and in excess of jurisdiction.

For explanation of the words 'exceeded his jurisdiction': see *Ratt v Parkinson* (1851) 20 LJMC 208 at 212 per Jervis CJ (where he gives as an example of such excess the case of *Leary v Patrick* (1850) 15 QB 266); *Ward v Stevenson* (1844) 8 JP 789; 1 New Sess Cas 162 (conviction where the circumstances did not amount to a crime); *Barton v Bricknell* (1850) 13 QB 393; *Kendall v Wilkinson* (1855) 4 E & B 680; *Bott v Ackroyd* (1859) 5 Jur NS 1053; *Pedley v Davis* (1861) 10 CBNS 492; *Pease v Chaytor* (1861) 1 B & S 658; *R v Nunneley* (1858) EB & E 852; *Re McC (A Minor)* [1985] AC 528, sub nom *McC v Mullan* [1984] 3 All ER 908, HL (justices acted without or in excess of jurisdiction having failed to inform a defendant of his right to legal aid as required by the Treatment of Offenders (Northern Ireland) Order 1976, SI 1976/226 (NI 4) before ordering his detention at a training school).

4 Justices of the Peace Act 1997 s 52(1) (as renumbered: see note 2 supra). As to indemnity of justices see PARA 571 post.

## UPDATE

### **565-568 Justices and justices' clerks acting within their jurisdiction ... Immunity from costs**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

### **566 Justices and justices' clerks acting beyond jurisdiction**

TEXT AND NOTES--Replaced by Courts Act 2003 s 32.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(9) LIABILITY, PROTECTION AND INDEMNITY/(i) Liability and Protection/567. Setting aside prohibited proceedings.

### **567. Setting aside prohibited proceedings.**

If any claim is brought in circumstances in which Part V of the Justices of the Peace Act 1997<sup>1</sup> provides that no claim is to lie<sup>2</sup>, a judge of the court in which the claim is brought may, on the application of the defendant and upon an affidavit as to the facts, set aside the proceedings, with or without costs, as the judge thinks fit<sup>3</sup>.

1 Ibid the Justices of the Peace Act 1997 Pt V (ss 51-54) (as amended).

2 Ibid under ibid s 51 or s 52 (both as amended): see PARAS 565-566 ante. As to indemnity of justices and justices' clerks see PARA 571 post.

3 Ibid s 53.

## UPDATE

## **565-568 Justices and justices' clerks acting within their jurisdiction ... Immunity from costs**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

## **567 Setting aside prohibited proceedings**

TEXT AND NOTES--Replaced by Courts Act 2003 s 33.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(9) LIABILITY, PROTECTION AND INDEMNITY/(i) Liability and Protection/568. Immunity from costs.

## **568. Immunity from costs.**

Except in any proceedings in which (1) a justice or justices' clerk<sup>1</sup> is being tried for an offence or is appealing against a conviction<sup>2</sup>; or (2) it is proved that a justice or justices' clerk acted in bad faith in respect of the matters giving rise to the proceedings<sup>3</sup>, a court may not order any justice of the peace or justices' clerk to pay costs in any proceedings in respect of any act or omission of his in the execution (or purported execution) of his duty<sup>4</sup>.

Where a court is prevented from ordering a justice or justices' clerk to pay costs in any proceedings<sup>5</sup>, the court may instead order, in accordance with regulations, the making by the Lord Chancellor<sup>6</sup> of a payment in respect of the costs of a person in the proceedings<sup>7</sup>.

Such regulations provide that when making an order<sup>8</sup> the court must determine such amount as it considers sufficient reasonably to compensate the receiving party for any costs properly incurred by him in the proceedings<sup>9</sup>, and specify that amount in the order<sup>10</sup>. The amount of costs is determined by a costs judge<sup>11</sup> where (a) the hearing has lasted more than one day or there is insufficient time for the court to determine the costs on the day of the hearing<sup>12</sup>; or (b) the court considers that there is another good reason for the costs judge to determine the amount of costs<sup>13</sup>. The court serves the order on the receiving party and on the Lord Chancellor together, where necessary<sup>14</sup>, with notification that costs will be determined by a costs judge<sup>15</sup>.

Where the amount of costs is to be determined by a costs judge, the receiving party must file his claim<sup>16</sup> and a copy of the order in the Supreme Court Costs Office and serve a copy of the claim on the Lord Chancellor no later than three months<sup>17</sup> from (but excluding) the date on which the order was made<sup>18</sup>. A claim must:

- 23 (i) summarise the items of work done by a legal representative or the receiving party as a litigant in person, as appropriate<sup>19</sup>;
- 24 (ii) state, where appropriate, the dates on which items of work were done, the time taken and the sums claimed<sup>20</sup>; and
- 25 (iii) specify any disbursements claimed, including counsel's fees, the circumstances in which they were incurred and the amounts claimed in respect of them<sup>21</sup>.

The claim must be accompanied by receipts or other evidence of the receiving party's payment of the costs claimed, and any receipts or other documents in support of any disbursements claimed<sup>22</sup>. If the receiving party wishes to draw any special circumstances to the attention of the costs judge, he must specify those circumstances in his claim<sup>23</sup>. If the Lord Chancellor wishes to make any written representations in respect of the claim he must file any written

representations at the Supreme Court Costs Office and serve a copy of them on the receiving party no later than one month from (but excluding) the date on which the Lord Chancellor received the claim from the receiving party<sup>24</sup>.

The costs judge may make directions in respect of: (A) the claim<sup>25</sup>; (B) any written representations<sup>26</sup>; (C) the filing and serving of any further particulars or documents<sup>27</sup>; and (D) ensuring that the determination of costs is dealt with justly<sup>28</sup>. Where the costs judge considers it appropriate, the claim may be listed for a hearing before him, and the Supreme Court Costs Office must serve on the receiving party and on the Lord Chancellor notification of the place, date and time of the hearing<sup>29</sup>.

The costs judge must consider the claim and allow such costs in respect of such work as appears to him to have been actually and reasonably done, and such disbursements as appear to him to have been actually and reasonably incurred, as he considers sufficient reasonably to compensate the receiving party for any expenses properly incurred by him in the proceedings<sup>30</sup>. In determining these costs, the costs judge must take into account all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and the time involved<sup>31</sup>. When determining costs, a reasonable amount must be allowed in respect of all costs reasonably incurred and any doubts which the costs judge may have as to whether the costs were reasonably incurred or were reasonable in amount are to be resolved against the receiving party<sup>32</sup>. When the costs judge has determined the amount of costs payable to the receiving party, the Supreme Court Costs Office must notify the receiving party and the Lord Chancellor of the amount of costs payable<sup>33</sup>.

1 As to the appointment and qualification of justices' clerks see PARA 631 et seq post. 'Justices' clerk' in this context includes any person appointed by a magistrates' courts committee to assist a justices' clerk: Justices of the Peace Act 1997 s 53A(6) (s 53A added by the Access to Justice Act 1999 s 98(1)). For the meaning of 'justices' clerk' generally see PARA 631 post. As to magistrates' courts committees see PARA 612 et seq post.

2 Justices of the Peace Act 1997 s 53A(2)(a) (as added: see note 1 supra).

3 Ibid s 53A(2)(b) (as added: see note 1 supra).

4 Ibid s 53A(1) (as added: see note 1 supra). This provision applies to a justice acting in the execution (or purported execution) of his duty as such a justice (s 53A(1)(a) (as so added)), or to a justices' clerk acting in the execution (or purported execution) of his duty as such a clerk exercising, by virtue of any statutory provision, any of the functions of a single justice (s 53A(1)(b) (as so added)).

5 Ie under ibid s 53A(1) (as added: see note 1 supra).

6 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

7 Justices of the Peace Act 1997 s 53A(3) (as added: see note 1 supra). The Lord Chancellor may by statutory instrument make regulations specifying: (1) circumstances when a court may or may not exercise the power conferred on it by s 53A(3) (as added) (s 53A(4)(a) (as added: see note 1 supra)); and (2) how the amount of any payment ordered under s 53A(3) (as added) is to be determined (s 53A(4)(b) (as so added)). No regulations may be made under s 53A(4) (as added) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament (s 53A(5) (as so added)). In exercise of this power the Lord Chancellor has made the Justices and Justices' Clerks (Costs) Regulations 2001, SI 2001/1296. No order may be made under the Justices of the Peace Act 1997 s 53A(3) (as added) in favour of a public authority, or a person acting on behalf of a public authority, or in his capacity as an official appointed by a public authority: Justices and Justices' Clerks (Costs) Regulations 2001, SI 2001/1296, reg 3.

8 An 'order' means a claim for costs made by the receiving party: ibid reg 2. Where the court makes an order, the amount of costs payable by the Lord Chancellor is determined in accordance with the Justices and Justices' Clerks (Costs) Regulations 2001, SI 2001/1296: see reg 4. A 'receiving party' means the person in whose favour the order is made: reg 2.

9 'Proceedings' means proceedings in respect of any act or omission of a justice of the peace or a justices' clerk in the execution (or purported execution) of his duty as a single justice, or as a justices' clerk exercising, by virtue of any statutory provision, any of the functions of a single justice: ibid reg 2.

10 Ibid reg 5(1).



11 le in accordance with *ibid* regs 6, 7. A 'costs judge' means a taxing master of the Supreme Court: reg 2. 'Supreme Court' means in relation to England and Wales, the Court of Appeal and the High Court together with the Crown Court: Interpretation Act 1978 s 5, Sch 1: see *COURTS*. As to areas and authorities in England and Wales see *LOCAL GOVERNMENT* vol 69 (2009) *PARAS* 24 et seq, 37 et seq. For the meaning of 'England' see *PARA* 501 note 7 ante; and for the meaning of 'Wales' see *PARA* 501 note 7 ante. 'Court of Appeal' means in relation to England and Wales, Her Majesty's Court of Appeal in England: Sch 1. For the meaning of 'High Court' see *PARA* 513 note 8 ante; and for the meaning of 'Crown Court' see *PARA* 508 note 9 ante.

12 Justices and Justices' Clerks (Costs) Regulations 2001, SI 2001/1296, reg 5(2)(a).

13 *Ibid* reg 5(2)(b).

14 le where *ibid* reg 5(2) applies: see the text and notes 11-13 *supra*.

15 *Ibid* reg 5(3).

16 A 'claim' means a claim for costs made by the receiving party: *ibid* reg 2.

17 On the application of the receiving party to the Supreme Court Costs Office, the costs judge may, in exceptional circumstances, extend the period of three months: *ibid* reg 6(2).

18 *Ibid* reg 6(1).

19 *Ibid* reg 6(3)(a).

20 *Ibid* reg 6(3)(b).

21 *Ibid* reg 6(3)(c).

22 *Ibid* reg 6(3).

23 *Ibid* reg 6(4).

24 *Ibid* reg 6(5).

25 *Ibid* reg 6(6)(a).

26 *Ibid* reg 6(6)(b).

27 *Ibid* reg 6(6)(c).

28 *Ibid* reg 6(6)(d).

29 *Ibid* reg 6(7).

30 *Ibid* reg 7(1).

31 *Ibid* reg 7(2).

32 *Ibid* reg 7(3).

33 *Ibid* reg 7(4).

## UPDATE

### **565-568 Justices and justices' clerks acting within their jurisdiction ... Immunity from costs**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

### **568 Immunity from costs**

TEXT AND NOTES--Replaced by Courts Act 2003 s 34 (amended by Constitutional Reform Act 2005 Sch 4 para 329).

NOTE 11--'Supreme Court' now means the Supreme Court of the United Kingdom: 1978 Act Sch 1 (amended by 2005 Act Sch 11 para 24) (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(9) LIABILITY, PROTECTION AND INDEMNITY/(i) Liability and Protection/569. Offences by a magistrate acting in that capacity.

### **569. Offences by a magistrate acting in that capacity.**

A justice of the peace commits an indictable offence if, otherwise than in good faith and in the belief that he had the legal right to do the act in question and without any intention to act corruptly or oppressively, he inflicts upon any person from an improper motive any bodily harm, imprisonment or (other than extortion) in exercise of or under colour of exercising his office<sup>1</sup>. A justice of the peace also commits an indictable offence if he commits a breach of trust or fraud in a matter affecting the public<sup>2</sup>, or if he neglects to perform a duty imposed on him by common law or statute<sup>3</sup>, or if, being duly qualified, he refuses to carry out his duties<sup>4</sup>.

If a justice in the course of his official duties has had access to a record containing information as to spent convictions, he is bound by the statutory restrictions on the disclosure of that information<sup>5</sup>.

1 Stephen *Digest of the Criminal Law* (9th Edn, 1950) 112; Bac Abr, Offices and Officers (N). See further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 536.

2 See *R v Bembridge* (1783) 3 Doug KB 327 at 332.

3 See Stephen *Digest of the Criminal Law* (9th Edn, 1950) 114.

4 See Stephen *Digest of the Criminal Law* (9th Edn, 1950) 118; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 537.

5 See the Rehabilitation of Offenders Act 1974 s 9 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 538.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(9) LIABILITY, PROTECTION AND INDEMNITY/(i) Liability and Protection/570. Examples of criminal misconduct.

### **570. Examples of criminal misconduct.**

Examples of forms of misconduct<sup>1</sup> for which magistrates have been prosecuted are oppression<sup>2</sup>, acting where they were directly interested<sup>3</sup>, the improper conviction of innocent persons<sup>4</sup>, an illegal sentence<sup>5</sup>, interfering with the order of another magistrate<sup>6</sup>, refusing bail improperly<sup>7</sup> or from partial and corrupt motives<sup>8</sup>, corruptly making a false return to a mandamus<sup>9</sup> or disobedience to a mandamus<sup>10</sup>, neglect of duty in not using force to suppress a riot<sup>11</sup>, corruptly making illegal appointments<sup>12</sup>, and the grant or refusal of licences from corrupt motives<sup>13</sup> or political prejudice<sup>14</sup> or resentment<sup>15</sup>. There are various other examples<sup>16</sup>.

There must be a dishonest, oppressive, or corrupt motive, under which description fear and favour is required, for an act to be the subject of a prosecution<sup>17</sup>. A genuine error committed by a magistrate, or a mere irregularity<sup>18</sup>, does not justify a prosecution<sup>19</sup>.

1 The misconduct by a magistrate in his capacity as such: *R v Arrowsmith* (1843) 2 Dowl NS 704 (assault by magistrate several days after proceedings).

2 *R v Soane* (1738) Andr 272.

3 *R v Davis* (1772) Lofft 62 where, although the information, applied for under a provision now repealed, was not granted, the justice was not allowed costs. See also *R v Whately* (1829) 4 Man & Ry KB 431; and *R v Hoseason* (1811) 14 East 605, where the rule was discharged, but the defendant was ordered to pay all the costs.

4 *R v Webster* (1789) 3 Term Rep 388.

5 *R v Mather* (1733) 2 Barn KB 249.

6 *R v Brooke* (1788) 2 Term Rep 190.

7 *R v Badger* (1843) 4 QB 468.

8 *R v Rye Corpn Justices* (1752) Say 25.

9 *R v Lancashire Justices* (1822) 1 Dow & Ry KB 485; *R v Spotland Overseers* (1735) Lee temp Hard 184; *R v Petteward* (1769) 4 Burr 2452. Orders of mandamus are now known as mandatory orders: see JUDICIAL REVIEW vol 61 (2010) PARA 703 et seq.

10 *R v Corbett and Coulson* (1756) Say 267.

11 *R v Heming* (1833) 5 B & Ad 666; *R v Pinney* (1832) 3 State Tr NS 11 at 17.

12 *R v Somersetshire Justices* (1822) 1 Dow & Ry KB 443.

13 *R v Holland and Forster* (1787) 1 Term Rep 692.

14 *R v Williams, R v Davis* (1762) 3 Burr 1317.

15 *R v Hann and Price* (1765) 3 Burr 1716; cf *R v Young and Pitts* (1758) 1 Burr 556.

16 See the cases cited in 33 Digest 167-171.

17 *R v Saunders* (1847) 10 QB 484; *R v Borron* (1820) 3 B & Ald 432 at 434 per Abbott CJ; *R v Badger* (1843) 4 QB 468; *Re Fentiman* (1834) 4 Nev & MKB 126; *R v Baylis* (1762) 3 Burr 1318; *R v Cozens* (1780) 2 Doug KB 426; *R v Williamson* (1820) 3 B & Ald 582.

18 *R v Cox* (1759) 2 Burr 785 (error of judgment not enough); *R v Borron* (1820) 3 B & Ald 432 at 434 per Abbott CJ; *R v Jackson* (1787) 1 Term Rep 653 (error of law); *R v Barton* (1850) 16 LTOS 212.

19 *R v Fielding* (1759) 2 Burr 719.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(9) LIABILITY, PROTECTION AND INDEMNITY/(ii) Indemnity/571. Indemnity of justices and clerks by the appropriate authority.

## (ii) Indemnity

### 571. Indemnity of justices and clerks by the appropriate authority.

A justice of the peace or justices' clerk<sup>1</sup> may be indemnified by the appropriate authority<sup>2</sup> in respect of the following relevant amounts<sup>3</sup>:

- 26 (1) any costs reasonably incurred by him in or in connection with proceedings in respect of anything done or omitted in the exercise (or purported exercise) of the duty of his office, or in taking steps to dispute any claim which might be made in such proceedings<sup>4</sup>;
- 27 (2) any damages awarded against him or costs ordered to be paid by him in any such proceedings<sup>5</sup>; and
- 28 (3) any sums payable by him in connection with a reasonable settlement of any such proceedings or claim<sup>6</sup>.

A justice or justices' clerk (a) must be indemnified by the appropriate authority in respect of relevant amounts which relate to criminal matters unless it is proved, in respect of the matters giving rise to the proceedings or claim, that he acted in bad faith<sup>7</sup>; and (b) in respect of other relevant amounts (i) may be indemnified by the appropriate authority unless it is proved, in respect of the matters giving rise to the proceedings or claim, that he acted in bad faith<sup>8</sup>; and (ii) must be so indemnified if, in respect of the matters giving rise to the proceedings or claim, he acted reasonably and in good faith<sup>9</sup>.

Any question whether, or to what extent, a person is to be indemnified is determined by the magistrates' courts committee for the area for which he acted at the material time<sup>10</sup>. Costs or sums mentioned in heads (1) and (3) above may, if the person claiming to be indemnified so requests, be made in advance before those costs are incurred or the settlement made, as the case may be<sup>11</sup>. However, any such determination in advance for indemnity in respect of costs to be incurred is subject to such limitations, if any, as the committee thinks proper and to the subsequent determination of the amount of the costs reasonably incurred, and does not affect any other determination which may fall to be made in connection with the proceedings or claim in question<sup>12</sup>.

An appeal lies to a person appointed<sup>13</sup> for the purpose by the Lord Chancellor<sup>14</sup>:

- 29 (A) on the part of the person claiming to be indemnified, from any decision of the magistrates' courts committee<sup>15</sup>, other than a decision to postpone until after the conclusion of the proceedings any determination with respect to his own costs or to impose any limitations on making a determination in advance for indemnity in respect of such costs<sup>16</sup>;
- 30 (B) on the part of the paying authority<sup>17</sup>, from any determination of the magistrates' courts committee<sup>18</sup> other than a determination in advance for indemnity in respect of costs to be incurred by the person claiming to be indemnified<sup>19</sup>.

The Lord Chancellor may make rules prescribing the procedure to be followed in any appeal<sup>20</sup>.

1 As to the appointment and qualification of justices' clerks see PARA 631 et seq post. 'Justices' clerk' in this context includes any person appointed by a magistrates' courts committee to assist a justices' clerk: Justices of the Peace Act 1997 s 54(9). As to magistrates' courts committees see PARA 612 et seq post.

2 For these purposes 'appropriate authority' means (1) the Greater London Magistrates' Courts Authority, where at the material time the justice or justices' clerk was acting for an area consisting of or falling within Greater London (ibid s 54(2A)(a) (s 54(2A) added by the Access to Justice Act 1999 s 83(3), Sch 12 paras 9, 14(1), (3)); or (2) the paying authority or authorities, where at the material time the justice or justices' clerk was acting for an area outside Greater London (Justices of the Peace Act 1997 s 54(2A)(b) (as so added)). As to the Greater London Magistrates' Courts Authority see PARA 616 post.

3 See ibid s 51(1), (2) (as amended).

4 Ibid s 54(1)(a) (amended by the Access to Justice Act 1999 ss 99(a), 106, Sch 15 Pt VI). As to the liability and protection of justices and justices' clerks generally see PARA 565-570 ante.

5 Justices of the Peace Act 1997 s 54(1)(b).

6 Ibid s 54(1)(c).

7 Ibid s 54(2)(a) (amended by the Access to Justice Act 1999 s 83(3), Sch 12 paras 9, 14).

8 Justices of the Peace Act 1997 s 54(2)(b)(i) (amended by the Access to Justice Act 1999 ss 83(3), 99, 106, Sch 12 paras 9, 14(1), (2), Sch 15 Pt VI).

9 Justices of the Peace Act 1997 s 54(2)(b)(ii).

10 Ibid s 54(3). Guidance on the application of the Administration of Justice Act 1964 s 27(2) (repealed: see now the Justices of the Peace Act 1997 s 54(3)-(5)) is contained in Home Office Circulars 229/64 and 105/65.

11 Justices of the Peace Act 1997 s 54(4).

12 Ibid s 54(5).

13 This person is brought under the supervision of the Council on Tribunals: see the Tribunals and Inquiries Act 1992 s 1, Sch 1 para 23 (as amended). As to the functions of the Council on Tribunals see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 56-57.

14 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

15 Ie under the Justices of the Peace Act 1997 s 54(3) or s 54(4).

16 Ibid s 54(6)(a).

17 For these purposes 'paying authority' means (1) in relation to any justice or justices' clerk who at the material time acted for an area outside Greater London, any authority which is a paying authority for the purposes of ibid s 55 (as amended) (see PARA 642 post) in relation to the magistrates' courts committee for that area (s 54(9)(a) (amended by the Access to Justice Act 1999 s 83(3), Sch 12 paras 9, 14(1), (5)); and (2) in relation to a justice or justices' clerk who at the material time acted for an area consisting of or falling within Greater London, the council of any London borough or the Common Council of the City of London (Justices of the Peace Act 1997 s 54(9)(b) (as so amended)).

Where, in relation to any justice or justices' clerk acting for an area outside Greater London, there are two or more paying authorities, any question as to the extent to which the funds required to indemnify him are to be provided by each authority is to be determined by agreement between those authorities and the magistrates' courts committee concerned or, in default of such agreement, is to be determined by the Lord Chancellor (s 54(7) (amended by the Access to Justice Act 1999 s 83(3), Sch 12 paras 9, 14(1), (4)).

18 Ie under the Justices of the Peace Act 1997 s 54(3).

19 Ibid s 54(6)(b).

20 Ibid s 54(8). At the date at which this volume states the law no such rules had been made under s 54(8), but by virtue of s 73(1), Sch 4 para 1(2), the Indemnification of Justices and Clerks (Appeals) Rules 1965, SI 1965/1367, have effect as if made under the Justices of the Peace Act 1997 s 54(8). These rules provide for giving notice of appeal (see the Indemnification of Justices and Clerks (Appeals) Rules 1965, SI 1965/1367, rr 3, 4), the provision of written submissions by both parties (see r 5), the requirements for determining the appeal (see rr 6, 7), the form the decision takes (see r 8), abandoning the appeal (see r 9), extending the time appointed for doing any act (see r 10), and the procedure to be followed for the purposes of an appeal (see r 11). For the form that a notice of appeal should take see r 3(2), Schedule.

## UPDATE

### 571 Indemnity of justices and clerks by the appropriate authority

TEXT AND NOTES--Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. See now s 35, under which the Lord Chancellor, rather than a magistrates' courts

committee, may indemnify justices of the peace, justices' clerks and their assistants against costs orders in any proceedings, not only proceedings taken against them.

See further Constitutional Reform Act 2005 s 19, Sch 7 para 4 (protected functions of the Lord Chancellor); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(10) DISTRICT JUDGES (MAGISTRATES' COURTS)/(i) Introduction/572. Renaming of stipendiary magistrates as District Judges (Magistrates' Courts).

## **(10) DISTRICT JUDGES (MAGISTRATES' COURTS)**

### **(i) Introduction**

#### **572. Renaming of stipendiary magistrates as District Judges (Magistrates' Courts).**

The Access to Justice Act 1999 provided that provincial and metropolitan stipendiary magistrates were to serve on a unified bench, and were to be renamed District Judges (Magistrates' Courts)<sup>1</sup>. A District Judge (Magistrates' Courts) is, by virtue of his office, a justice of the peace for every commission area<sup>2</sup>, and although assigned to a specific area, has a nation-wide jurisdiction and can sit elsewhere when needed. District Judges (Magistrates' Courts) complement and work alongside lay magistrates<sup>3</sup>, and have the same jurisdiction, and carry out the same range of criminal and civil work as lay magistrates<sup>4</sup>. They are legally qualified<sup>5</sup> and normally sit alone when hearing cases, but are assisted in court by a legal adviser.

1 See the Access to Justice Act 1999 s 78 (which made amendments to the Justices of the Peace Act 1997); and PARA 573 et seq post.

2 See the Justices of the Peace Act 1997 s 10C(1) (added by the Access to Justice Act 1999 s 78(1)); and PARA 578 post. As to commission areas see PARA 507 ante.

3 See the Lord Chancellor's Department Press Release 309/00 (29 August 2000).

4 See PARA 534 et seq ante.

5 See PARA 573 post.

### **UPDATE**

#### **572-582 District Judges (Magistrates' Courts)**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see PARA 582A.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(10) DISTRICT JUDGES (MAGISTRATES' COURTS)/(ii) Appointment and Tenure of Office/573. District Judge (Magistrates' Courts).

## **(ii) Appointment and Tenure of Office**

### **573. District Judge (Magistrates' Courts).**

Her Majesty may, on the recommendation of the Lord Chancellor<sup>1</sup>, appoint a person who has a seven year general qualification<sup>2</sup> to be a District Judge (Magistrates' Courts)<sup>3</sup>.

A District Judge (Magistrates' Courts) may not be removed from office except by the Lord Chancellor on the ground of incapacity or misbehaviour<sup>4</sup>.

1 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 A person has a general qualification if he has a right of audience in relation to any class of proceedings in any part of the Supreme Court, or all proceedings in county courts or magistrates' courts: Courts and Legal Services Act 1990 s 71(3)(c); Justices of the Peace Act 1997 s 10A(1) (s 10A added by the Access to Justice Act 1999 s 78(1)). Any reference in any enactment, measure or statutory instrument to a person having such a qualification of a particular number of years' length is to be construed as a reference to a person who (1) for the time being has that qualification (Courts and Legal Services Act 1990 s 71(5)(a)); and (2) has had it for a period (which need not be continuous) of at least that number of years (s 71(5)(b)). For the meaning of 'Supreme Court' see PARA 568 note 11 ante.

'County court' means in relation to England and Wales, a court held for a district under the County Courts Act 1984: Interpretation Act 1978 Sch 1 (definition amended by the County Courts Act 1984 s 148(1), Sch 2 para 68). For the meaning of 'magistrates' court' see PARA 583 post. As to areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARAS 24 et seq, 347 et seq. For the meaning of 'England' see PARA 501 note 7 ante; and for the meaning of 'Wales' see PARA 501 note 7 ante.

3 Justices of the Peace Act 1997 s 10A(1) (as added: see note 2 supra). References in any enactment, instrument or other document to a district judge or deputy district judge do not include a District Judge (Magistrates' Courts): s 10C(4) (s 10C added by the Access to Justice Act 1999 s 78(1)).

4 Justices of the Peace Act 1997 s 10A(3) (as added: see note 2 supra).

### **UPDATE**

### **572-582 District Judges (Magistrates' Courts)**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see PARA 582A.

### **573 District Judge (Magistrates' Courts)**

TEXT AND NOTES--Replaced by Courts Act 2003 s 22 (amended by Constitutional Reform Act 2005 Sch 4 para 323; Tribunals, Courts and Enforcement Act 2007 Sch 10 para 38(2)). See further Constitutional Reform Act 2005 s 19, Sch 7 para 4 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1) and s 85 (see COURTS vol 10 (Reissue) PARA 515B.18).

NOTES 2, 3--The Lord Chancellor's function under the 1997 Act s 10A(1) (repealed with savings) is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(10) DISTRICT JUDGES (MAGISTRATES' COURTS)/(ii) Appointment and Tenure of Office/574. Senior District Judge (Chief Magistrate).

#### **574. Senior District Judge (Chief Magistrate).**

The Lord Chancellor<sup>1</sup> must designate one of the District Judges (Magistrates' Courts)<sup>2</sup> to be the Senior District Judge (Chief Magistrate)<sup>3</sup>, and the Lord Chancellor may designate another District Judge (Magistrates' Courts) to be his deputy<sup>4</sup>.

- 1 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.
- 2 As to the appointment and tenure of office of District Judges (Magistrates' Courts) see PARA 573 ante.
- 3 Justices of the Peace Act 1997 s 10A(2)(a) (s 10A added by the Access to Justice Act 1999 78(1)).
- 4 Justices of the Peace Act 1997 s 10A(2)(b) (as added: see note 3 supra).

#### **UPDATE**

#### **572-582 District Judges (Magistrates' Courts)**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see PARA 582A.

#### **574 Senior District Judge (Chief Magistrate)**

TEXT AND NOTES--Replaced by Courts Act 2003 s 23 (amended by Constitutional Reform Act 2005 Sch 3 para 5), under which Her Majesty now has a discretion, rather than a duty, to appoint a Senior District Judge (Chief Magistrate) and deputy. See further s 85, Sch 14 Pt 1; and COURTS vol 10 (Reissue) PARA 515B.18.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(10) DISTRICT JUDGES (MAGISTRATES' COURTS)/(ii) Appointment and Tenure of Office/575. Deputy District Judge (Magistrates' Courts).

#### **575. Deputy District Judge (Magistrates' Courts).**

The Lord Chancellor<sup>1</sup> may appoint any person who has a seven year general qualification<sup>2</sup> to be a Deputy District Judge (Magistrates' Courts) for such period as the Lord Chancellor considers appropriate<sup>3</sup>. The Lord Chancellor may remove a Deputy District Judge (Magistrates' Courts) from office on the ground of incapacity or misbehaviour<sup>4</sup>.

During the period of his appointment a Deputy District Judge (Magistrates' Courts) acts as a District Judge (Magistrates' Courts)<sup>5</sup> and is treated for all purposes (apart from appointment, tenure, remuneration and allowances<sup>6</sup> and pensions) as if he were a District Judge (Magistrates' Courts)<sup>7</sup>.

- 1 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.
- 2 As to when a person has a general qualification see PARA 573 note 2 ante.
- 3 Justices of the Peace Act 1997 s 10B(1) (s 10B added by the Access to Justice Act 1999 s 78(1)).



4 Justices of the Peace Act 1997 s 10B(2) (as added: see note 3 supra).

5 As to the appointment and tenure of office of District Judges (Magistrates' Courts) see PARA 573 ante.

6 As to the remuneration and allowances of Deputy District Judges (Magistrates' Courts) see PARA 576 post.

7 Justices of the Peace Act 1997 s 10B(4) (as added: see note 3 supra).

## **UPDATE**

### **572-582 District Judges (Magistrates' Courts)**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see PARA 582A.

### **575 Deputy District Judge (Magistrates' Courts)**

TEXT AND NOTES--Replaced by Courts Act 2003 s 24 (amended by Constitutional Reform Act 2005 Sch 4 para 324; Tribunals, Courts and Enforcement Act 2007 Sch 10 para 38(3)). See further Constitutional Reform Act 2005 s 85, Sch 14 Pt 2; and COURTS vol 10 (Reissue) PARA 515B.18.

NOTE 3--The Lord Chancellor's function under the 1997 Act s 10B(1) (repealed with savings) is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(10) DISTRICT JUDGES (MAGISTRATES' COURTS)/(iii) Salary and Superannuation/576. Salary.

## **(iii) Salary and Superannuation**

### **576. Salary.**

The Lord Chancellor<sup>1</sup> may pay to a District Judge (Magistrates' Courts)<sup>2</sup> such allowances, and to a Deputy District Judge (Magistrates' Courts)<sup>3</sup> such remuneration and allowances, as he may, with the approval of the Treasury<sup>4</sup>, determine<sup>5</sup>.

1 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 In addition to the salary charged on and paid out of the Consolidated Fund under the Administration of Justice Act 1973 s 9 (as amended): see COURTS. As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq. As to the appointment and tenure of office of District Judges (Magistrates' Courts) see PARA 573 ante.

3 As to the appointment and tenure of office of Deputy District Judges (Magistrates' Courts) see PARA 575 ante.

4 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

5 Justices of the Peace Act 1997 ss 10A(4), 10B(3) (ss 10A, 10B both added by the Access to Justice Act 1999 s 78(1)).

## UPDATE

### 572-582 District Judges (Magistrates' Courts)

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see PARA 582A.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(10) DISTRICT JUDGES (MAGISTRATES' COURTS)/(iii) Salary and Superannuation/577. Superannuation.

### 577. Superannuation.

A District Judge (Magistrates' Courts)<sup>1</sup> who retires<sup>2</sup> on or after the day on which he attains the age of 65, and who has, at the time of that retirement, completed, in the aggregate, at least five years' service, is entitled during his life to a pension at the appropriate annual rate<sup>3</sup>. A District Judge (Magistrates' Courts) who retires on or after the day on which he attains the age of 60, but before attaining the age of 65, and who has, at the time of that retirement, completed, in the aggregate, at least five years' service, is entitled to a pension at the appropriate annual rate, actuarially reduced<sup>4</sup>. A District Judge (Magistrates' Courts) is entitled to a pension at the appropriate annual rate where he retires before he has attained the age of 65 or before he has completed, in the aggregate, at least five years' service, and the Lord Chancellor<sup>5</sup> is satisfied by means of a medical certificate that by reason of infirmity of mind or body he is incapable of discharging his duties and that the incapacity is likely to be permanent<sup>6</sup>.

Where a judicial pension commences to be paid to a District Judge (Magistrates' Courts), he is also paid a lump sum<sup>7</sup>; and where a District Judge (Magistrates' Courts) is deceased provision is made for a surviving spouse's pension<sup>8</sup> and a pension for any eligible children<sup>9</sup>.

Any pension or lump sum<sup>10</sup> payable to or in respect of a District Judge (Magistrates' Courts) is charged on, and paid out of, the Consolidated Fund<sup>11</sup>, and a pension<sup>12</sup> is payable at such intervals, not exceeding three months, as the Treasury<sup>13</sup> may determine<sup>14</sup>.

Apart from excepted schemes<sup>15</sup>, no other judicial pension scheme has effect in relation to a District Judge (Magistrates' Courts), and no pension or lump sum under any such scheme is payable to or in respect of him<sup>16</sup>.

1 As to the appointment and tenure of office of District Judges (Magistrates' Courts) see PARA 573 ante.

2 As to the retirement date see the Judicial Pensions and Retirement Act 1993 ss 26, 27, Schs 5, 7 (all as amended); and COURTS.

3 See *ibid* ss 1(1), (6), 2(1), Sch 1 Pt I (item added by the Access to Justice Act 1999 s 78(2), Sch 11 paras 39, 40).

In the case of a District Judge (Magistrates' Courts) who has, at the time of his retirement, completed, in the aggregate, at least 20 years' service, the appropriate annual rate is an annual rate equal to one-half of his pensionable pay: Judicial Pensions and Retirement Act 1993 s 3(1). In the case of a District Judge (Magistrates' Courts) who, at the time of his retirement, has not completed, in the aggregate, at least 20 years' service, the appropriate annual rate is an amount equal to one-fortieth of his pensionable pay, multiplied by the aggregate length of his service (expressed in years and fractions of a year): s 3(2). See further COURTS. As to the provision made for minimum pensions see the Judicial Pensions (Guaranteed Minimum Pension etc) Order 1995, SI 1995/2647 (amended by SI 1997/2667).

A District Judge (Magistrates' Courts) who held office on 31 March 1995 (ie the date the Judicial Pensions and Retirement Act 1993 came into force), and who held such office at any time before that day, is entitled, in

certain circumstances, to make an election for Pt I (ss 1-18) (as amended) (new arrangements for judicial pensions) to apply to him, if it would not otherwise do so: see ss 1(2), (10), 31(2); the Judicial Pensions and Retirement Act 1993 (Commencement) Order 1995, SI 1995/631; and COURTS.

4 Judicial Pensions and Retirement Act 1993 s 2(2).

5 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

6 See the Judicial Pensions and Retirement Act 1993 ss 2(3), 30(1). In such a case s 2(2) (see the text to note 4 supra) does not have effect in relation to that retirement, notwithstanding that the conditions in s 2(2) (a), (b) may be satisfied in the particular case: s 2(3).

7 Ibid s 4(1). The lump sum is of an amount equal to two and one-quarter times the annual rate of the pension: s 4(1). As to the increase of pensions see the Pensions (Increase) Act 1971; the Pensions Increase (Judicial Pensions) Regulations 1972, SI 1972/71 (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 614 et seq.

8 See the Judicial Pensions and Retirement Act 1993 s 5; and COURTS.

9 See *ibid* s 6; and COURTS.

10 *Ie* under *ibid* Pt I (as amended): see COURTS.

11 See *ibid* s 28(1)(a). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

12 *Ie* under *ibid* s 2: see COURTS.

13 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

14 Judicial Pensions and Retirement Act 1993 s 2(6).

15 *Ie* any scheme established by regulations under *ibid* s 10 (as amended) which may fall to be regarded as a judicial pension scheme, and the scheme constituted by s 19: see COURTS.

16 See *ibid* s 11(1). This provision is without prejudice to the accrued rights of a District Judge (Magistrates' Courts) to benefit under a scheme in respect of service before election to transfer to the new arrangements for judicial pensions, these accrued rights are transferred to the new scheme: ss 11(2), 12, 31(2); the Judicial Pensions and Retirement Act 1993 (Commencement) Order 1995, SI 1995/631; and COURTS.

## UPDATE

### 572-582 District Judges (Magistrates' Courts)

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see PARA 582A.

### 577 Superannuation

TEXT AND NOTES 1-14--See further 1993 Act s 2(3A), (9), (10) (added by Constitutional Reform Act 2005 Sch 4 para 227). See also s 19, Sch 7 para 4.

NOTE 3--SI 1995/2647 further amended: SI 2005/3325.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(10) DISTRICT JUDGES (MAGISTRATES' COURTS)/(iv) Powers/578. Status, powers and duties.

## (iv) Powers

## 578. Status, powers and duties.

A District Judge (Magistrates' Courts)<sup>1</sup> is by virtue of his office a justice of the peace for every commission area<sup>2</sup>. If any enactment makes provision defining the powers of any person or court by reference to the area for which a person is a justice of the peace, the provision has effect where that person is a District Judge (Magistrates' Courts) as if it defined the powers by reference to the area for which he is for the time being acting as justice of the peace<sup>3</sup>.

A District Judge (Magistrates' Courts) sits at such courthouses<sup>4</sup>, on such days and at such times, as may be determined by, or in accordance with, directions given by the Lord Chancellor<sup>5</sup> from time to time<sup>6</sup>. A District Judge (Magistrates' Courts) sits in a place appointed for the purpose and has power to do any act, and to exercise alone any jurisdiction, which can be done or exercised by two justices, including any act or jurisdiction expressly required to be done or exercised by justices sitting or acting in petty sessions<sup>7</sup>. Any statutory provision auxiliary to the jurisdiction exercisable by two justices of the peace also applies to the jurisdiction of a District Judge (Magistrates' Courts)<sup>8</sup>.

Any authority or requirement in any enactment for persons to be summoned or to appear at petty sessions in any case includes authority or a requirement in such a case for persons to be summoned or to appear before a District Judge (Magistrates' Courts) at the place appointed for his sitting<sup>9</sup>.

1 As to the appointment and tenure of office of District Judges (Magistrates' Courts) see PARA 573 ante.

2 Justices of the Peace Act 1997 s 10C(1) (s 10C added by the Access to Justice Act 1999 s 78(1)). As to commission areas see PARA 507 ante.

3 Justices of the Peace Act 1997 s 10C(2) (as added: see note 2 supra).

4 As to courthouses see PARA 583 et seq post.

5 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

6 Justices of the Peace Act 1997 s 10C(3) (as added: see note 2 supra).

7 Ibid s 10D(1) (s 10D added by the Access to Justice Act 1999 s 78(1)). As to petty sessions see PARA 591 et seq post. The Justices of the Peace Act 1997 s 10D(1) (as added) does not apply where the law under which the act or jurisdiction can be done or exercised was made after 2 August 1858 (ie the date the Stipendiary Magistrates Act 1858 received Royal Assent) and contains express provision contrary to the Justices of the Peace Act 1997 s 10D(1) (as added): s 10D(2) (as so added). Section 10D(1) (as added) does not apply where the act or jurisdiction relates to the grant or transfer of any licence: s 10D(4) (as so added).

Nothing in s 10D (as added) applies to the hearing or determination of family proceedings within the meaning of the Magistrates' Courts Act 1980 s 65 (see PARA 739 post): Justices of the Peace Act 1997 s 10D(6) (as so added).

8 Ibid s 10D(3) (as added: see note 7 supra). Section 10D(3) (as added) does not apply where the act or jurisdiction relates to the grant or transfer of any licence: s 10D(4) (as so added).

9 Ibid s 10D(5) (as added: see note 7 supra).

## UPDATE

### 572-582 District Judges (Magistrates' Courts)

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see PARA 582A.

## **578 Status, powers and duties**

TEXT AND NOTES--Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

TEXT AND NOTES 1-3--1997 Act s 10C(1, (2) replaced by 2003 Act s 25 (amended by Constitutional Reform Act 2005 Sch 4 para 325).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(10) DISTRICT JUDGES (MAGISTRATES' COURTS)/(iv) Powers/579. Delivery and restitution orders.

## **579. Delivery and restitution orders.**

By virtue of the Metropolitan Police Courts Act 1839, a District Judge (Magistrates' Courts)<sup>1</sup> has power to make an order for the delivery to the owner of goods which have been stolen or unlawfully obtained, or which, although lawfully obtained, have been unlawfully deposited, sold or exchanged<sup>2</sup>.

A District Judge (Magistrates' Courts) may make orders with respect to property which has come into the possession of the police in connection with their investigation of a suspected offence<sup>3</sup>.

1 The Metropolitan Police Courts Act 1839 referred to the 'office of a justice of the peace in the several police offices established in the metropolis': see s 1 (repealed). By virtue of the Administration of Justice Act 1964 s 9 (now repealed), the jurisdiction of metropolitan stipendiary magistrates and lay magistrates in inner London was integrated, enabling the powers exercisable under the Metropolitan Police Courts Act 1839 ss 27, 28 (both as amended) (see the text and note 2 *infra*) to be exercisable by both. Provincial and metropolitan stipendiary magistrates now serve on a unified bench, and have been renamed District Judges (Magistrates' Courts): see PARA 572 *ante*. As to the appointment and tenure of office of District Judges (Magistrates' Courts) see PARA 573 *ante*.

2 See the Metropolitan Police Courts Act 1839 s 27 (amended by the Statute Law Revision (No 2) Act 1888; and the Consumer Credit Act 1974 s 192(3)(b), Sch 5 Pt I); and the Metropolitan Police Courts Act 1839 s 28 (amended by the Statute Law Revision (No 2) Act 1890; and the Consumer Credit Act 1974 s 192(3)(b), Sch 5 Pt I).

Upon complaint being made, the District Judge (Magistrates' Courts) may issue a summons or warrant for the appearance before him of the broker or dealer with whom the goods were deposited and the production of the goods, he may order them to be delivered to the owner either without payment or on payment of such sum and at such time as he thinks fit: Metropolitan Police Courts Act 1839 s 27. Should the broker or dealer refuse to deliver up the goods, or dispose of them after notice that they were stolen or unlawfully obtained, the District Judge (Magistrates' Courts) may determine the full value of the goods and order him to pay it to the owner: s 27. The broker or dealer may, within six months of the District Judge's (Magistrates' Courts) order, commence an action for the recovery of goods from the person to whom they were delivered under the order: s 27. An order may be made for goods unlawfully exchanged to be returned to the owner, with or without compensation: s 28 (amended by the Consumer Credit Act 1974 s 192(3)(b), Sch 5 Pt I). As to restitution of stolen property see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 375 *et seq*, 388, 481.

3 See the Police (Property) Act 1897 s 1(1); and POLICE vol 36(1) (2007 Reissue) PARA 520.

## **UPDATE**

## **572-582 District Judges (Magistrates' Courts)**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see PARA 582A.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(10) DISTRICT JUDGES (MAGISTRATES' COURTS)/(iv) Powers/580. Power to put landlord into possession of deserted premises.

### **580. Power to put landlord into possession of deserted premises.**

A District Judge (Magistrates' Courts)<sup>1</sup>, in every case within the metropolitan police district<sup>2</sup> in which two justices are authorised under the Distress for Rent Act 1737 or the Deserted Tenements Act 1817<sup>3</sup> to put the landlord or lessor into possession of deserted premises, may on application made by the landlord or lessor or his bailiff or receiver, and on proof of rent being in arrear and desertion of the premises by the tenant, issue a warrant requiring a metropolitan police officer<sup>4</sup> to view the premises and affix notices of the application<sup>5</sup>.

On proof of the execution of that warrant, and that the tenant has not appeared and paid the rent in arrear, and that there is not sufficient distress upon the premises, the District Judge (Magistrates' Courts) may issue a warrant for the landlord or lessor to be put into possession<sup>6</sup>.

1 As to the appointment and tenure of office of District Judges (Magistrates' Courts) see PARA 573 ante.

2 The metropolitan police district consists of Greater London, excluding the City of London, the Inner Temple and the Middle Temple: London Government Act 1963 s 76(1) (substituted by the Greater London Authority Act 1999 s 323); and see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29; POLICE vol 36(1) (2007 Reissue) PARA 137. As to the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 31; and as to the Temples see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 32.

3 As to the Distress for Rent Act 1737 see DISTRESS; LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 649. As to the Deserted Tenements Act 1817 see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 649.

4 As to the metropolitan police see POLICE vol 36(1) (2007 Reissue) PARA 137.

5 Metropolitan Police Courts Act 1840 s 13 (amended by the Access to Justice Act 1999 s 78(2), Sch 11 para 5). This power to send a constable to view and to give possession may not, it seems, be exercised by the Lord Mayor or alderman at the Mansion House or Guildhall: *Edwards v Hodges* (1855) 15 CB 477. As to the power of the District Judge (Magistrates' Courts) to exercise alone any jurisdiction exercisable by two justices see PARA 578 ante.

6 Metropolitan Police Courts Act 1840 s 13 (as amended: see note 5 supra).

## **UPDATE**

### **572-582 District Judges (Magistrates' Courts)**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see PARA 582A.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(10) DISTRICT JUDGES (MAGISTRATES' COURTS)/(iv) Powers/581. Correction of errors in plans.

## **581. Correction of errors in plans.**

Where land is acquired by a local authority in London<sup>1</sup> for various purposes<sup>2</sup>, a District Judge (Magistrates' Courts)<sup>3</sup> may from time to time issue his certificate correcting errors in deposited plans or books or reference<sup>4</sup>.

1 The London County Council (General Powers) Act 1957 s 8 (as amended by the Local Law (Greater London Council and Inner London Boroughs) Order 1965, SI 1965/540, art 4(1), Sch 2) refers to the Greater London Council. This body, which replaced the London County Council, has itself now been abolished and its functions have mainly been transferred to the London borough councils and the Common Council of the City of London. As to the Greater London Council see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 4-5, 33. As to the London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35-39, 59 et seq. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 51-55.

2 As to the power of local authorities in London to acquire land see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 72. See also LOCAL GOVERNMENT vol 69 (2009) PARA 508 et seq. As to compulsory acquisition of land generally see COMPULSORY ACQUISITION OF LAND.

3 As to the appointment and tenure of office of District Judges (Magistrates' Courts) see PARA 573 ante.

4 See eg the London County Council (General Powers) Act 1957 s 8 (amended by the Local Law (Greater London Council and Inner London Boroughs) Order 1965, SI 1965/540, art 4(1), Sch 2).

### **UPDATE**

## **572-582 District Judges (Magistrates' Courts)**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see PARA 582A.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(10) DISTRICT JUDGES (MAGISTRATES' COURTS)/(iv) Powers/582. Extradition.

## **582. Extradition.**

The Senior District Judge (Chief Magistrate)<sup>1</sup> or another District Judge (Magistrates' Courts)<sup>2</sup> designated by him, has certain special powers for the extradition from the United Kingdom<sup>3</sup> of fugitive criminals from certain foreign states<sup>4</sup>.

1 As to the appointment and tenure of office of Senior District Judges (Chief Magistrate) see PARA 574 ante.

2 As to the appointment and tenure of office of District Judges (Magistrates' Courts) see PARA 573 ante.

3 For the meaning of 'United Kingdom' see PARA 528 note 3 ante.

4 See eg the Extradition Act 1989 ss 8(1)(a), 9(2) (both as amended); and EXTRADITION vol 17(2) (Reissue) PARAS 1115, 1187-1189, 1211-1213.

### **UPDATE**

## **572-582 District Judges (Magistrates' Courts)**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see PARA 582A.

## **582 Extradition**

TEXT AND NOTES--1989 Act repealed: Extradition Act 2003 Sch 4.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/1. THE OFFICE AND JURISDICTION OF MAGISTRATES/(10) DISTRICT JUDGES (MAGISTRATES' COURTS)/(iv) Powers/582A. Judges having powers of District Judges (Magistrates' Courts).

### **582A. Judges having powers of District Judges (Magistrates' Courts).**

The following provisions are partly in force: SI 2003/3345.

Every holder of a judicial office specified below<sup>1</sup> has the powers of a justice of the peace who is a District Judge (Magistrates' Courts) in relation to (1) criminal causes and matters, and (2) family proceedings<sup>2</sup>. The offices are (a) judge of the High Court; (b) deputy judge of the High Court; (c) circuit judge; (d) deputy circuit judge; (e) recorder<sup>3</sup>.

1    Ie specified in the Courts Act 2003 s 66(2).

2    As defined by the Magistrates' Courts Act 1980 s 65 (see PARA 739): Courts Act 2003 s 66(1) (head (2) in the TEXT not yet in force).

3    Ibid s 66(2).

For the purposes of the Children and Young Persons Act 1933 s 45 (see PARA 608), every holder of a judicial office specified in the Courts Act 2003 s 66(2) is qualified to sit as a member of a youth court: s 66(3). For the purposes of the Magistrates' Courts Act 1980 s 67 (see PARA 603) (1) a judge of the High Court or a deputy judge of the High Court is qualified to sit as a member of a family proceedings court to hear family proceedings of any description, and (2) a circuit judge, deputy circuit judge or recorder is qualified to sit as a member of a family proceedings court to hear family proceedings of any description if he has been nominated to do so by the President of the Family Division: Courts Act 2003 s 66(4) (not yet in force).

## **UPDATE**

### **572-582 District Judges (Magistrates' Courts)**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see PARA 582A.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(1) IN GENERAL/583. Meaning of 'magistrates' court'.

## **2. MAGISTRATES' COURTS**

### **(1) IN GENERAL**

#### **583. Meaning of 'magistrates' court'.**



In England and Wales<sup>1</sup> 'magistrates' court<sup>2</sup> means any justice or justices of the peace acting<sup>3</sup> under any enactment<sup>4</sup> or by virtue of his or their commission or under the common law<sup>5</sup>. Except where the contrary is expressed<sup>6</sup>, anything authorised or required by the Magistrates' Courts Act 1980 to be done by, to or before the magistrates' court by, to or before which any other thing was done, or is to be done, may be done by, to or before any magistrates' court acting for the same petty sessions area<sup>7</sup> as that court<sup>8</sup>.

A magistrates' court must not: (1) try summarily an information<sup>9</sup> for an indictable offence<sup>10</sup> or hear a complaint except when sitting in a petty-sessional courthouse<sup>11</sup>; (2) try an information for a summary offence<sup>12</sup> or hold an inquiry into the means of an offender<sup>13</sup>, or impose imprisonment<sup>14</sup>, except when sitting in a petty-sessional courthouse or an occasional courthouse<sup>15</sup>.

There are two types of magistrates' court the constitution, sitting and procedure of which are governed by special rules, namely the family proceedings court<sup>16</sup> and the youth court<sup>17</sup>.

A magistrates' court is an inferior court<sup>18</sup>. For some purposes at least it seems that it is a court of record<sup>19</sup>. Power is conferred on magistrates' courts to punish contempts in the face of the court<sup>20</sup>.

A magistrates' court may sit on any day of the year, and in particular, if the court thinks fit, on Christmas Day, Good Friday or any Sunday<sup>21</sup>.

1 For the meaning of 'England' see PARA 501 note 7 ante; and for the meaning of 'Wales' see PARA 501 note 7 ante.

2 'Magistrates' court' subsumes and supersedes the former terms 'court of summary jurisdiction' and 'petty-sessional court'.

'Court of summary jurisdiction' meant any justice or justices of the peace, or other magistrate, by whatever name called, to whom jurisdiction is given by, or who is authorised to act under, the Summary Jurisdiction Acts, and whether acting under the Summary Jurisdiction Acts or any of them, or under any other Act, or by virtue of his commission, or under the common law: Interpretation Act 1889 s 13(11) (repealed). References to a court of summary jurisdiction occur in many statutes passed before the Magistrates' Courts Act 1952, which repealed and consolidated the greater part of the Summary Jurisdiction Acts (as defined in the Interpretation Act 1889 s 13(7) (repealed)), together with many other enactments affecting magistrates' courts.

'Petty-sessional court' meant a court of summary jurisdiction consisting of two or more justices when sitting in a petty-sessional courthouse, and included any metropolitan or borough police magistrate or other stipendiary magistrate when sitting in a courthouse or place at which he was authorised by law to do alone any act authorised to be done by more than one justice of the peace: Interpretation Act 1889 s 13(12) (repealed); Justices of the Peace Act 1968 s 8(2), Sch 5 Pt II (repealed). As to the origin of the expression 'petty sessions' see *R v Beacontree Division of Essex Justices*, *R v Wright* [1915] 3 KB 388 at 400, DC, per Ridley J.

3 'Acting' has been held to be limited by the meaning of the word as used in the earlier and superseded definitions, ie to mean only acting in the exercise of powers of summary jurisdiction, however derived: *Boulter v Kent Justices* [1897] AC 556 at 571, HL, per Lord Hershell; *Hagmaier v Willesden Overseers* [1904] 2 KB 316, DC. See also PARA 535 ante.

4 As to the meaning of 'enactment' see PARA 505 note 16 ante.

5 Magistrates' Courts Act 1980 s 148(1). This definition applies for the purposes of any other Act unless the contrary intention appears: Interpretation Act 1978 s 5, Sch 1 (amended by the Magistrates' Courts Act 1980 s 154, Sch 7 para 169). Licensing justices sit as a magistrates' court: *R v East Riding of Yorkshire Quarter Sessions, ex p Newton* [1968] 1 QB 32, [1967] 3 All ER 118, CA, approving *Jeffrey v Evans* [1964] 1 All ER 536, [1964] 1 WLR 505, DC.

6 See eg the Magistrates' Courts Rules 1981, SI 1981/552 (as amended), which provide that a case for the opinion of the High Court may be stated on behalf of the justices whose decision is questioned by any two or more of them and may, if the justices so direct, be signed on their behalf by their clerk: see r 78(2).

7 As to petty sessions areas see PARAS 591-592 post.

- 8 Magistrates' Courts Act 1980 s 148(2); Interpretation Act 1978 Sch 1 (as amended: see note 5 supra).
- 9 As to the laying of informations see PARA 681 et seq post.
- 10 For the meaning of 'indictable offence' see PARA 653 post.
- 11 Magistrates' Courts Act 1980 s 121(3)(a). See further PARA 538 ante. As to the hearing of complaints see PARA 681 et seq post. As to petty-sessional courthouses see PARA 584 post.
- 12 For the meaning of 'summary offence' see PARA 653 post. As to the procedure for offences triable summarily see PARA 681 et seq post.
- 13 Ie for the purposes of the Magistrates' Courts Act 1980 s 82 (as amended): see PARAS 854, 862 post.
- 14 For the meaning of 'impose imprisonment' see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 6.
- 15 Magistrates' Courts Act 1980 s 121(3)(b). See further PARA 538 ante. As to occasional courthouses see PARA 585 post.
- 16 As to the constitution of family proceedings courts see PARAS 603-607 post. As to family proceedings see PARAS 739-745 post; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 199 et seq; MATRIMONIAL AND CIVIL PARTNERSHIP LAW.
- 17 As to the constitution of youth courts see PARAS 608-611 post; and as to proceedings in youth courts see PARAS 746-756 post.
- 18 See COURTS. In proceedings before magistrates' courts the maxim *omnia praesumuntur rite esse acta* does not apply to give jurisdiction (*R v All Saints, Southampton* (1828) 7 B & C 785 at 790; *London Corpn v Cox* (1867) LR 2 HL 239 at 262-263 per Willes J). See also *R v Kent Justices* (1889) 24 QBD 181, DC, where it was held that a magistrates' court may be restrained from exceeding its jurisdiction by an order of prohibition (now known as a prohibiting order: see JUDICIAL REVIEW vol 61 (2010) PARA 693 et seq); and *R v Southampton Justices, ex p Green* [1976] QB 11, [1975] 2 All ER 1073, CA, where the justices order was quashed by an order of certiorari (now known as quashing order: see JUDICIAL REVIEW vol 61 (2010) PARA 693 et seq).
- 19 Lambard's *Eirenarcha* 62, 64. Thus, a record of a conviction is conclusive evidence of the decision of the justices: *R (Cart) v Tyrone Justices* [1917] 2 IR 437; and see *Chaney v Payne* (1841) 1 QB 712 at 724. The Phillimore Committee on Contempt of Court did not appear to regard magistrates' courts as courts of record so as to confer a power to punish contempt: see the *Report of the Committee on Contempt of Court* (Cmd 5794) (1974) ('Phillimore Committee Report') PARA 25. However, the High Court has power to protect magistrates in this respect: *R v Parke* [1903] 2 KB 432, DC; *R v Davies* [1906] 1 KB 32, DC. As to the distinctions between courts of record and courts not of record see COURTS.
- 20 See the Contempt of Court Act 1981 s 12 (as amended); *Practice Note (Magistrates' Court: Contempt in the face of Court)* [2001] 3 All ER 94; and CONTEMPT OF COURT vol 9(1) (Reissue) PARA 454.
- 21 Magistrates' Courts Act 1980 s 153.

## UPDATE

### 583 Meaning of 'magistrates' court'

TEXT AND NOTES 9-15--1980 Act s 121(3) repealed: Courts Act 2003 Sch 8 para 239(4), Sch 10.

NOTE 21--Repealed: *ibid* Sch 8 para 252, Sch 10.

The Lord Chancellor, after consulting the Lord Chief Justice, now has the power to direct where and when magistrates' courts may sit; and, in exercising such power, he must have regard to the need to ensure that court-houses are accessible to persons resident in each local justice area: s 30(1), (2), (7) (s 30(1), (7) amended by Constitutional Reform Act 2005 Sch 4 para 328(2), (3)). The Lord Chief Justice may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4)) to exercise his functions under the 2003 Act s 30(1) or (7): s 30(9) (added by 2005 Act Sch 4 para 328(4)). The Lord Chancellor, with the concurrence of the Lord

Chief Justice, may give directions as to the distribution and transfer of magistrates' courts business, excluding family proceedings: 2003 Act s 30(3)-(6).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(1) IN GENERAL/584. Meaning of 'petty-sessional courthouse'.

#### **584. Meaning of 'petty-sessional courthouse'.**

'Petty-sessional courthouse' means any of the following: (1) a courthouse or place at which justices are accustomed to assemble for holding special or petty sessions<sup>1</sup> or for the time being appointed as a substitute for such a courthouse or place (including, where justices are accustomed to assemble for either special or petty sessions at more than one courthouse or place in a petty sessions area<sup>2</sup>, any such courthouse or place)<sup>3</sup>; (2) a courthouse or place at which a District Judge (Magistrates' Courts)<sup>4</sup> is authorised by law to do alone any act authorised to be done by more than one justice of the peace<sup>5</sup>.

Licensed premises may not be used as a petty-sessional courthouse<sup>6</sup>.

1 As to petty sessions see PARA 591 et seq post.

2 As to petty sessions areas see PARAS 591-592 post.

3 Magistrates' Courts Act 1980 s 150(1)(a) (amended by the Access to Justice Act 1999 s 76(2), Sch 10 paras 33, 36); Justices of the Peace Act 1997 s 72(1) (amended by the Access to Justice Act 1999 Sch 10 paras 47, 52(1), (3)).

4 As to the appointment and tenure of office of District Judges (Magistrates' Courts) see PARA 573 ante.

5 Magistrates' Courts Act 1980 s 150(1)(b) (amended by the Access to Justice Act 1999 s 78(2), Sch 11 paras 26, 30); Justices of the Peace Act 1997 s 72(1) (amended by the Access to Justice Act 1999 s 78(2), Sch 11 paras 43, 49).

6 See the Licensing Act 1964 s 190(1).

#### **UPDATE**

#### **584 Meaning of 'petty-sessional courthouse'**

TEXT AND NOTES 1-5--Definition repealed: Courts Act 2003 Sch 8 para 250(2), Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(1) IN GENERAL/585. Meaning of 'occasional courthouse'.

#### **585. Meaning of 'occasional courthouse'.**

The justices acting for a petty sessions area<sup>1</sup> may appoint as an occasional courthouse<sup>2</sup> any place that is not a petty-sessional courthouse<sup>3</sup>, but a place so appointed after 31 May 1953<sup>4</sup> must not be so used unless public notice of its appointment has been given<sup>5</sup>.

Licensed premises may not be used as an occasional courthouse<sup>6</sup>.

1 As to petty sessions areas see PARAS 591-592 post.

2 As to the maximum penalties which may be imposed in an occasional courthouse see PARA 538 ante. There may be more than one occasional courthouse for each petty sessions area; and an occasional courthouse may be outside the petty sessions area for which it is appointed: Magistrates' Courts Act 1980 s 147(3). If it is outside the area it is deemed to be in that area for the purpose of the jurisdiction of the justices acting for that area: s 147(3).

3 Ibid s 147(1). For the meaning of 'petty-sessional courthouse' see PARA 584 ante.

4 Ie the date before that on which the Magistrates' Courts Act 1952 (now repealed) came into force.

5 Magistrates' Courts Act 1980 s 147(2).

6 See the Licensing Act 1964 s 190(1).

## UPDATE

### 585 Meaning of 'occasional courthouse'

TEXT AND NOTES--Repealed: Courts Act 2003 Sch 8 para 247, Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(1) IN GENERAL/586. Open court.

### 586. Open court.

Where it is not otherwise provided by statute<sup>1</sup>, a magistrates' court<sup>2</sup> when required to sit in a petty-sessional or occasional courthouse must sit in open court<sup>3</sup>. Exceptions to this rule occur for example (1) when magistrates are sitting as examining justices<sup>4</sup> and it appears to them as respects the whole or any part of committal proceedings that the ends of justice would not be served by their sitting in open court<sup>5</sup>; (2) where the court is sitting for the hearing of family proceedings<sup>6</sup>, other than proceedings under the Adoption Act 1976<sup>7</sup>; (3) where the court is sitting as a youth court<sup>8</sup>; and (4) by order of the court in proceedings under the Official Secrets Acts where publication of the evidence would be prejudicial to national safety<sup>9</sup>.

The court also has inherent jurisdiction to sit in camera if the administration of justice so requires, but there must be compelling reasons for the court to adopt such a course<sup>10</sup>. For instance, a magistrates' court may exclude members of the public where the administration of justice would be rendered impracticable by their presence<sup>11</sup>. In making its decision a court is entitled to take into account such matters as security, public order, decency, safety and the protection of minors<sup>12</sup>. Although a magistrate has discretion to hear representations in chambers in the course of a trial, he must exercise that power sparingly and with caution, ensuring that all parties know that the hearing is taking place and are represented, and also ensuring that a contemporaneous note is taken by the magistrates' clerk<sup>13</sup>. An application to withhold unused evidentiary material from the defence on the grounds of public interest immunity, may be heard in camera<sup>14</sup>.

Magistrates may not sit anonymously or withhold their identity from public and press<sup>15</sup>.

1 For examples see the text to notes 4-9 infra. There is also power to exclude from the court persons not concerned in the case when a child or young person is called as a witness in proceedings in relation to an offence against, or conduct contrary to, decency or morality: see the Children and Young Persons Act 1933 s 37(1); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1281. As to the power to prohibit publication of certain matters which may lead to the identification of any child or young person covered in proceedings see s 39 (as amended); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1271.

- 2 For the meaning of 'magistrates' court' see PARA 583 ante.
  - 3 Magistrates' Courts Act 1980 s 121(4). See further PARA 538 ante. In *R v Denbigh Justices, ex p Williams* [1974] QB 759, [1974] 2 All ER 1052, DC, it was held on the facts that proceedings had been in open court even though the magistrates had permitted only five members of the public to be present.
  - 4 As to the use of the expression 'examining justices' see PARA 524 note 9 ante.
  - 5 See the Magistrates' Courts Act 1980 s 4(2).
  - 6 For the meaning of 'family proceedings' see PARA 739 post.
  - 7 See the Magistrates' Courts Act 1980 s 69(2) (as amended); and PARA 741 post.
  - 8 See the Children and Young Persons Act 1933 s 47(2) (as amended); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1267.
  - 9 See the Official Secrets Act 1920 s 8(4); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 504.
  - 10 *R v Evesham Justices, ex p McDonagh* [1988] QB 553, [1988] 1 All ER 371, DC; *R v Malvern Justices, ex p Evans* [1988] QB 540, [1988] 1 All ER 371, DC.
  - 11 *Scott v Scott* [1913] AC 417, HL; *R v Governor of Lewes Prison, ex p Doyle* [1917] 2 KB 254; *R v Malvern Justices, ex p Evans* [1988] QB 540, [1988] 1 All ER 371, DC.
  - 12 As to directions prohibiting the publication of a name or other material permitted to be withheld from the public in proceedings before the court see the Contempt of Court Act 1981 s 11; and CONTEMPT OF COURT vol 9(1) (Reissue) PARA 432. Such orders must be committed to writing either by the judge personally or by the clerk of the court under the judge's directions: see *Practice Note (Contempt of Court: Reports of Proceedings: Postponement)* [1983] 1 All ER 64, sub nom *Practice Direction (Contempt: Reporting Restrictions)* [1982] 1 WLR 1475, CA; and CONTEMPT OF COURT vol 9(1) (Reissue) PARA 432. See *R v Arundel Justices, ex p Westminster Press Ltd* [1985] 2 All ER 390, [1985] 1 WLR 708 (where a defendant's name was disclosed in court, the court no longer had jurisdiction to make a direction under the Contempt of Court Act 1981 s 11); and *R v Tower Bridge Magistrates' Court, ex p Osborne* (1987) 152 JP 310, [1988] Crim LR 382 (it is generally necessary to hear an application not to disclose name in camera).
- The reason for making an order must be to do with the administration of justice and must not be motivated solely by sympathy for the person whose name or address is to be withheld (*R v Evesham Justices, ex p McDonagh* [1988] QB 553, [1988] 1 All ER 371, DC), or out of concern for the economic damage to his business (*R v Dover Justices, ex p Dover District Council and Wells* (1991) 156 JP 433, [1992] Crim LR 371, DC).
- As to the powers of a magistrates' court to protect a child's privacy in proceedings before it see PARA 743 post.
- 13 *R v Nottingham Magistrates' Court, ex p Furnell* (1995) 160 JP 201, DC.
  - 14 See generally *R v Stipendiary Magistrate for Norfolk, ex p Taylor* [1998] Crim LR 276, (1997) 161 JP 773; *R v Bromley Magistrates, ex p Smith* [1995] 4 All ER 146, [1995] 1 WLR 944, DC; *R v South Worcestershire Magistrates, ex p Lilley* [1995] 4 All ER 186, [1995] 1 WLR 1595, DC; and CIVIL PROCEDURE vol 11 (2009) PARAS 574-579.
  - 15 *R v Felixstowe Justices, ex p Leigh* [1987] QB 582, [1987] 1 All ER 551, DC.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(1) IN GENERAL/587. Nature of judicial powers.

### **587. Nature of judicial powers.**

The judicial powers of magistrates' courts are the creation of statute<sup>1</sup>. Numerous Acts of Parliament confer these powers and deal with a great variety of subjects, with the result that there are peculiarities of procedure incidental to some of them<sup>2</sup>, but the mode in which the powers conferred by them are exercised, and the procedure generally governing their exercise, are prescribed by the Magistrates' Courts Act 1980 and the rules made under it<sup>3</sup>.

1 *White v Feast* (1872) LR 7 QB 353 at 358 per Blackburn J; cf *Cullen v Trimble* (1872) LR 7 QB 416; *Johnson v Colam* (1875) LR 10 QB 544, DC. However, justices have an inherent power to regulate the procedure in their courts in the interests of justice and of a fair and expeditious trial: *Simms v Moore* [1970] 2 QB 327, [1970] 3 All ER 1, DC. See also *Mayes v Mayes* [1971] 2 All ER 397, [1971] 1 WLR 679, DC. The powers of a justice to bind over are exceptionally derived from his commission or the common law: *Lansbury v Riley* [1914] 3 KB 229 at 236-237, DC, per Avory J. See also *R v Kent Justices, ex p Lye* [1967] 2 QB 153, [1967] 1 All ER 560, DC.

2 As to family proceedings courts see PARAS 603-607, 739-745 post. As to youth courts see PARAS 608-611, 746-756 post.

3 As to the rules made under the Magistrates' Courts Act 1980 see PARA 588 post.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(1) IN GENERAL/588. The Rule Committee and the rules made by it.

### **588. The Rule Committee and the rules made by it.**

Under the Magistrates' Courts Act 1980<sup>1</sup> the Lord Chancellor<sup>2</sup> may appoint, and has appointed, a rule committee for magistrates' courts<sup>3</sup>, and on the advice of or after consultation with this committee he may make rules<sup>4</sup> for regulating and prescribing the procedure and practice to be followed in magistrates' courts and by justices' clerks<sup>5</sup> and justices' chief executives<sup>6</sup>.

The rule committee consists of the Lord Chief Justice<sup>7</sup>, the President of the Family Division of the High Court<sup>8</sup>, the Senior District Judge (Chief Magistrate)<sup>9</sup> and such number of other persons as the Lord Chancellor may determine may be appointed<sup>10</sup>, but among their number there must be at least one justices' clerk, one person who has a Supreme Court qualification<sup>11</sup>, and one person who has been granted by an authorised body, under Part II of the Courts and Legal Services Act 1990<sup>12</sup>, the right to conduct litigation in relation to all proceedings in the Supreme Court<sup>13</sup>.

The power to make such rules is exercisable by statutory instrument which is subject to annulment by resolution of either House of Parliament<sup>14</sup>. Any rules made under the Justices of the Peace Act 1949, or having effect as if made under it,<sup>15</sup> continue to have effect as if contained in rules made under the Magistrates' Courts Act 1980<sup>16</sup>, as do any rules, directions, forms or other instrument which had effect as if contained in rules made under the Justices of the Peace Act 1949<sup>17</sup>.

The power to make such rules includes power to make provision as to:

- 31 (1) the practice and procedure of justices in exercising functions preliminary or incidental to proceedings before a magistrates' court<sup>18</sup>;
- 32 (2) the service and execution of process issued by or for the purposes of a magistrates' court, including the service and execution in England and Wales of process issued in other parts of the United Kingdom<sup>19</sup>;
- 33 (3) the keeping of records of proceedings before magistrates' courts and the manner in which things done in the course of, or as preliminary or incidental to, any such proceedings, or any proceedings on appeal from a magistrates' court to the Crown Court<sup>20</sup>, may be proved in any legal proceedings<sup>21</sup>;
- 34 (4) the furnishing by any person having custody of the depositions of copies thereof, and of copies of the information if it is in writing, to a person committed for trial<sup>22</sup>;
- 35 (5) what magistrates' court has jurisdiction to hear any complaint<sup>23</sup>;

- 36 (6) the matters additional to those specified<sup>24</sup> on complaint for which a magistrates' court has power to make an order with the consent of the defendant without hearing evidence<sup>25</sup>;
- 37 (7) any other matters as to which immediately before 25 March 1952<sup>26</sup> provision was or could have been made by virtue of the enactments and parts of enactments repealed by the Justices of the Peace Act 1949<sup>27</sup>.

As from a day to be appointed, the power to make such rules includes power to make provision as to the determination of applications for the transfer of trials of summary offences<sup>28</sup>, including provision for their determination by justices' clerks<sup>29</sup>.

No provision included in such rules which dispenses with the need to prove that a summons issued<sup>30</sup> and served in accordance with the rules has come to the knowledge of the accused applies to a summons for an indictable offence<sup>31</sup>.

1 le under the Magistrates' Courts Act 1980 s 144 (as amended): see the text and notes 2-14 infra.

2 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 For the meaning of 'magistrates' court' see PARA 583 ante.

4 The following rules have been made under the Magistrates' Courts Act 1980 s 144 (as amended): the Magistrates' Courts Rules 1981, SI 1981/552 (amended by SI 1983/523; SI 1984/1552; SI 1985/1944; SI 1986/1332; SI 1988/2132; SI 1989/300; SI 1989/384; SI 1990/336; SI 1990/1190; SI 1990/2260; SI 1991/1991; SI 1992/457; SI 1992/709; SI 1992/729; SI 1992/2072; SI 1993/1183; SI 1994/1481; SI 1994/3154; SI 1995/585; SI 1995/2619; SI 1997/706; SI 1998/2167; SI 1999/2765; SI 2000/3361; SI 2001/167; and SI 2001/610); the Magistrates' Courts (Forms) Rules 1981, SI 1981/553 (amended by SI 1983/524; SI 1984/1542; SI 1985/1945; SI 1986/1333; SI 1988/2132; SI 1989/384; SI 1990/336; SI 1992/729; SI 1993/1183; SI 1994/1481; SI 1995/585; SI 1995/1909; SI 1997/707; SI 1997/2421; SI 1999/1149; SI 1999/2765; SI 1999/3039; SI 2001/166; SI 2001/615; and SI 2001/1149); the Magistrates' Courts (Adoption) Rules 1984, SI 1984/611 (amended by SI 1989/384; SI 1991/1991; SI 1992/709; SI 2001/615; and SI 2001/820); the Magistrates' Courts (Advance Information) Rules 1985, SI 1985/601 (amended by SI 1992/2072); the Magistrates' Courts (Discontinuance of Proceedings) Rules 1986, SI 1986/367 (amended by SI 2001/615; and SI 2001/1149); the Magistrates' Courts (Welsh Forms) Rules 1986, SI 1986/1079; the Magistrates' Courts (Child Abduction and Custody) Rules 1986, SI 1986/1141 (amended by SI 1991/1991; and SI 2001/615); the Magistrates' Courts (Civil Jurisdiction and Judgments Act 1982) Rules 1986, SI 1986/1962 (amended by SI 1992/457; SI 1993/617; SI 2001/615; and SI 2002/194); the Magistrates' Courts (Family Law Act 1986) Rules 1988, SI 1988/329 (amended by SI 1991/1991; and SI 2001/615); the Magistrates' Courts (Notices of Transfer) Rules 1988, SI 1988/1701 (amended by SI 1997/708; and SI 2001/615); the Magistrates' Courts (Extradition) Rules 1989, SI 1989/1597 (amended by SI 2000/1872; and SI 2001/615); the Magistrates' Courts (Social Security Act 1986) (Transfer of Orders to Maintain and Enforcement of Maintenance Orders) Rules 1990, SI 1990/1909 (amended by SI 2001/615); the Magistrates' Courts (Civilian Enforcement Officers) Rules 1990, SI 1990/2260 (amended by SI 2001/164); the Magistrates' Courts (Criminal Justice (International Co-operation)) Rules 1991, SI 1991/1074 (amended by SI 2001/615); the Family Proceedings Courts (Children Act 1989) Rules 1991, SI 1991/1395 (amended by SI 1991/1991; SI 1992/2068; SI 1994/2166; SI 1994/3156; SI 1997/1895; SI 2001/615; and SI 2001/818); the Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405 (amended by SI 2000/1873; and SI 2001/615); the Family Proceedings Courts (Constitution) (Metropolitan Area) Rules 1991, SI 1991/1426 (amended by SI 2000/1873); the Magistrates' Courts (Detention and Forfeiture of Drug Trafficking Cash) Rules 1991, SI 1991/1923 (amended by SI 1994/3154; and SI 2001/615); the Family Proceedings Courts (Matrimonial Proceedings etc) Rules 1991, SI 1991/1991 (amended by SI 1992/2068; SI 1992/2071; SI 1993/627; SI 1994/809; SI 1997/1894; SI 2001/615; and SI 2001/778); the Magistrates' Courts (Costs Against Legal Representatives in Civil Proceedings) Rules 1991, SI 1991/2096 (amended by SI 2001/615); the Magistrates' Courts (Attendance Centre) Rules 1992, SI 1992/2069 (amended by SI 2001/615); the Magistrates' Courts (Notice of Transfer) (Children's Evidence) Rules 1992, SI 1992/2070 (amended by SI 1997/709; and SI 2001/615); the Magistrates' Courts (Children and Young Persons) Rules 1992, SI 1992/2071 (amended by SI 1997/2420; SI 1998/2167; SI 1999/1343; SI 2001/165; and SI 2001/615); the Family Proceedings Courts (Child Support Act 1991) Rules 1993, SI 1993/627 (amended by SI 2001/615; and SI 2001/778); the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (United States of America) Rules 1995, SI 1995/2802; the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997, SI 1997/703 (amended by SI 2001/615); the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Confidentiality) Rules 1997, SI 1997/704 (amended by SI 2001/615); the Magistrates' Courts (Advance Notice of Expert Evidence) Rules 1997, SI 1997/705; the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Tainted Acquittals) Rules 1997, SI 1997/1055 (amended by SI 2001/615); the Magistrates' Courts (Sex Offender and Anti-social Behaviour Orders) Rules 1998, SI 1998/2682 (amended by SI 2001/615); the Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999, SI

1999/681 (amended by SI 2001/615); the Justices' Clerks Rules 1999, SI 1999/2784; the Magistrates' Courts (International Criminal Court) (Forms) Rules 2001, SI 2001/2600; and the Magistrates' Courts (Detention and Forfeiture of Terrorist Cash) (No 2) Rules 2001, SI 2001/4013. See PARA 505 note 12 ante.

5 For this purpose, 'justices' clerk' means a clerk to the justices' for a petty sessions area: Magistrates' Courts Act 1980 s 144(5). As to justices' clerks see PARA 631 et seq post.

6 Magistrates' Courts Act 1980 s 144(1) (amended by the Access to Justice Act 1999 s 90(1), Sch 13 paras 95, 116).

The power to make rules conferred by the Magistrates' Courts Act 1980 s 144 (as amended) also includes power to make provision as to any of the matters mentioned in the Adoption Act 1976 s 66(1): see s 66(2) (amended by the Magistrates' Courts Act 1980 s 154, Sch 7 para 141).

Rules made under the Magistrates' Courts Act 1980 s 144 (as amended) may make provision with respect to the composition of youth courts and youth court panels: see s 146 (as amended); and PARA 609 post.

Rules made under s 144 (as amended) may make provision for a magistrates' court to sit in private in proceedings in which any powers under the Children Act 1989 may be exercised by the court with respect to any child: s 97(1). This provision is without prejudice to the generality of the rule making power of the Magistrates' Courts Act 1980 s 144 (as amended) or any other power of a magistrates' court to sit in private: Children Act 1989 s 97(7). See further CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 227.

Rules made under the Magistrates' Courts Act 1980 s 144 (as amended) may also make, in relation to any family proceedings, any provision which: (1) falls within the Children Act 1989 s 93(2) (as amended) (rules of court) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 207); and (2) may be made in relation to relevant proceedings under s 93 (as amended): Courts and Legal Services Act 1990 s 10(2) (amended by the Maintenance Enforcement Act 1991 s 11(1), Sch 2 para 11). 'Family proceedings' means proceedings under the Domestic Proceedings and Magistrates' Courts Act 1978 Pt I (ss 1-35) (as amended) (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 553 et seq); Courts and Legal Services Act 1990 s 10(1) (substituted by the Maintenance Enforcement Act 1991 Sch 2 para 11). Rules may also make provision for giving effect to the Children Act 1989 and subordinate legislation made under it: see s 93(1), (2) (as amended); the Magistrates' Courts Act 1980 s 144(1); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 207.

Rules have been made regulating the power conferred on magistrates' courts to make wasted costs' orders: see s 145A(1) (as added and amended); the Magistrates' Courts (Costs Against Legal Representatives in Civil Proceedings) Rules 1991, SI 1991/2096 (as amended); and PARA 770 post.

Any Act passed before 16 December 1949, in so far as that Act relates to matters about which rules may be made under the Magistrates' Courts Act 1980 s 144 (as amended), has effect subject to any rules so made and may be amended or repealed by the rules accordingly: s 145(3). However, nothing in s 144 (as amended) authorises the rules to reduce the number of justices required for any purpose by any Act: s 145(3) proviso.

7 As to the Lord Chief Justice see COURTS.

8 As to the President of the Family Division of the High Court see COURTS.

9 As to the appointment and tenure of office of Senior District Judges (Chief Magistrates) see PARA 574 ante.

10 Magistrates' Courts Act 1980 s 144(2) (amended by the Access to Justice Act 1999 s 78(2), Sch 11 paras 26, 29).

11 Ie within the meaning of the Courts and Legal Services Act 1990 s 71 (as amended): see LEGAL PROFESSIONS vol 65 (2008) PARA 742.

12 Ie the Courts and Legal Services Act 1990 Pt II (ss 17-70) (as amended): see LEGAL PROFESSIONS.

13 Magistrates' Courts Act 1980 s 144(3) (amended by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 25).

14 Magistrates' Courts Act 1980 s 144(4).

15 Ie under the Justices of the Peace Act 1949 s 15 (now repealed).

16 Interpretation Act 1978 s 17(2)(b).

17 See the Magistrates' Courts Act 1980 s 145(5). The rules etc referred to in the text to this note are those which previously had effect under enactments repealed by the Justices of the Peace Act 1949 Sch 7 Pt II (now repealed): see the Magistrates' Courts Act 1980 s 145(5). The following such rules have effect under s 144 (as amended): the Maintenance Orders (Facilities for Enforcement) Rules 1922, SR & O 1922/1355 (amended by SI 1970/762; SI 1989/384; SI 1992/457; SI 1993/617; SI 2000/1875; and SI 2001/615); the Maintenance Orders Act



1950 (Summary Jurisdiction) Rules 1950, SI 1950/2035 (amended by SI 1980/1895; SI 1992/457; and SI 2001/615); the Youth Courts (Constitution) Rules 1954, SI 1954/1711 (amended by SI 1979/952; SI 1983/675; SI 1991/2099; SI 1996/577; SI 1996/3068; SI 1998/2167; SI 2000/1873; and amended by virtue of the Criminal Justice Act 1991 s 70); the Magistrates' Courts (Maintenance Orders Act 1958) Rules 1959, SI 1959/3 (amended by SI 1971/809; SI 1977/1890; SI 1980/1896; SI 1986/1962; SI 1989/384; SI 1992/457; and SI 2001/615); the Magistrates' Courts (Backing of Warrants) Rules 1965, SI 1965/1906 (amended by SI 1989/1596; and SI 2001/615); the Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809 (amended by SI 2001/615); the Magistrates' Courts (Blood Tests) Rules 1971, SI 1971/1991 (amended by SI 1989/384; and SI 2001/776); the Magistrates' Courts (Children and Young Persons) (Welsh Forms) Rules 1973, SI 1973/1119; the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) Rules 1974, SI 1974/668 (amended by SI 1975/2236; SI 1979/170; SI 1983/1148; SI 1986/1962; SI 1992/457; SI 1993/617; and SI 2001/615); the Magistrates' Courts (Guardianship of Minors) Rules 1974, SI 1974/706 (amended by SI 1980/1585; SI 1989/384; and SI 1991/1991); the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Republic of Ireland) Rules 1975, SI 1975/286 (amended by SI 1992/457; SI 1993/617; and SI 2001/615); the Magistrates' Courts (Recovery Abroad of Maintenance) Rules 1975, SI 1975/488 (amended by SI 1980/1584; SI 1993/617; and SI 2001/615); the Justices' Clerks (Qualifications of Assistants) Rules 1979, SI 1979/570 (amended by SI 1980/1897; SI 1992/1834; SI 1998/3107; SI 1999/2814; SI 2001/2269; and SI 1992/709); and the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Hague Convention Countries) Rules 1980, SI 1980/108 (amended by SI 1986/1962; SI 1992/457; SI 1993/617; SI 1999/2002; and SI 2001/615).

18 Magistrates' Courts Act 1980 s 145(1)(a).

19 Ibid s 145(1)(b). For the meaning of 'United Kingdom' see PARA 528 note 3 ante.

20 For the meaning of 'Crown Court' see PARA 508 note 9 ante.

21 Magistrates' Courts Act 1980 s 145(1)(c).

22 Ibid s 145(1)(f).

23 Ibid s 145(1)(g). Where any Act expressly confers jurisdiction on any magistrates' court to hear a complaint, rules made under s 145(1)(g) do not take away that jurisdiction, but may extend it to any other magistrates' court: s 145(2). As to the meaning of 'Act' see PARA 526 note 1 ante. As to the hearing of complaints see PARA 681 et seq post.

24 Ie in ibid s 53: see PARAS 726, 761 post.

25 Ibid s 145(h).

26 Ie the date on which the Justices of the Peace Act 1949 s 15 (now repealed) came into force: see the Justices of the Peace Act 1949 (Commencement No 4) Order 1952, SI 1952/462, art 1, Schedule.

27 Magistrates' Courts Act 1980 s 145(1)(i). The text refers to the repeal of enactments and parts of enactments by the Justices of the Peace Act 1949 Sch 7 Pt II (now repealed).

28 Ie under the Magistrates' Courts Act 1980 s 3B (as prospectively added): see PARA 700 post.

29 Ibid s 145(1)(aa) (prospectively added by the Access to Justice Act 1999 s 80(2)). At the date at which this volume states the law no such day had been appointed.

30 Ie under the Magistrates' Courts Act 1980 s 1 (as amended): see PARAS 522-523 ante.

31 Ibid s 145(4). For the meaning of 'indictable offence' see PARA 653 post.

## UPDATE

### 588 The Rule Committee and the rules made by it

TEXT AND NOTES 1-14--1980 Act s 144 further amended: Constitutional Reform Act 2005 Sch 4 para 102. See further 1980 Act s 144A (added by Constitutional Reform Act 2005 Sch 4 para 103) (rules to be made if required by Lord Chancellor). See also s 19, Sch 7 para 4 (protected functions of the Lord Chancellor); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

NOTE 4--SI 1981/552, SI 1985/601, SI 1986/367, SI 1986/1079, SI 1988/1701, SI 1989/1597, SI 1992/2069-2071, SI 1997/703-705, SI 1997/1055 replaced by Criminal Procedure Rules 2005, SI 2005/384.

SI 1981/553 further amended: SI 2003/1236, SI 2005/617. SI 1984/611 revoked: SI 2005/2804. SI 1986/1141, SI 1986/1962, SI 1988/329, SI 1990/1909, SI 1991/1074 further amended: SI 2005/617. SI 1991/1991 further amended: SI 2005/617, SI 2009/2025. SI 1990/2260 further amended: SI 2005/1012. SI 1991/1395 further amended: SI 2005/229, SI 2005/617, SI 2005/2930, SI 2007/2188, SI 2008/2858, SI 2009/637, SI 2009/2025. SI 1991/1405 revoked, see now the Family Proceedings Courts (Constitution of Committees and Right to Preside) Rules 2007, SI 2007/1610 (amended by SI 2007/2621). SI 1991/1426 replaced, see now SI 2007/1610 (amended by SI 2007/2621).

SI 1992/2071 further amended: SI 2009/1892.

SI 1993/627 further amended: SI 2007/2188, SI 2009/858.

SI 1998/2682 now replaced by Magistrates' Courts (Sexual Offences Prevention Orders) Rules 2004, SI 2004/1054 (amended by SI 2005/617). SI 1999/2784 replaced by Justices' Clerks Rules 2005, SI 2005/545 (amended by SI 2005/2796, SI 2006/2493). See also Magistrates' Courts (Anti-Social Behaviour Orders) Rules 2002, SI 2002/2784 (amended by SI 2003/1236, SI 2005/617).

SI 2001/4013 amended: SI 2003/1236, SI 2005/617.

NOTE 5--Repealed: Courts Act 2003 Sch 10.

NOTE 6--1976 Act s 66(2) repealed: SI 2004/2035. Courts and Legal Services Act 1990 s 10(1) amended: Civil Partnership Act 2004 Sch 27 para 137.

TEXT AND NOTES 8, 9--Reference to the President of the Family Division of the High Court and the Senior District Judge (Chief Magistrate) omitted: 1980 Act s 144(2) (amended by Courts Act 2003 Sch 8 para 245(3), Sch 10).

TEXT AND NOTES 11-13--Among such number of other persons there must now be at least one District Judge (Magistrates' Courts), one justices' clerk, one person who has a Senior Courts qualification, and one person who has been authorised by a relevant approved regulator to conduct litigation in relation to all proceedings in the Senior Courts: 1980 Act s 144(3) (amended by Courts Act 2003 Sch 8 para 245(4); Constitutional Reform Act 2005 Sch 11 para 4; and Legal Services Act 2007 Sch 21 para 43). 'Relevant approved regulator' is to be construed in accordance with the Legal Services Act 2007 s 20(3) (see LEGAL PROFESSIONS vol 65 (2008) PARA 358): 1980 Act s 144(3A) (added by Legal Services Act 2007 Sch 21 para 43).

TEXT AND NOTE 14--Repealed: Courts Act 2003 Sch 8 para 246(3), Sch 10.

NOTE 17--SR & O 1922/1355, SI 1954/1711, SI 1959/3, SI 1965/1906 further amended: SI 2005/617. SI 1950/2035 further amended: SI 2005/617, SI 2005/2930. SI 1954/1711 further amended: SI 2006/680. SI 1971/809 further amended: SI 2003/1236, SI 2005/617. SI 1971/1991 further amended: SI 2004/2033, SI 2005/617. SI 1974/668 further amended: SI 2002/1734, SI 2005/617. SI 1974/706 further amended: SI 2005/617, SI 2005/2930. SI 1975/286, SI 1976/246, SI 1980/108 all further amended: SI 2005/617. SI 1975/488 further amended: SI 2005/617, SI 2007/2267. SI 1979/570 (as amended) replaced: Assistants to Justices' Clerks Regulations 2006, SI 2006/3405 (amended by SI 2007/1448).

TEXT AND NOTES 18-27--The power to make such rules now includes the power to make rules authorising, for the purposes of the law relating to contempt of court, the publication in such circumstances as may be specified of information relating to

proceedings referred to in the Administration of Justice Act 1960 s 12(1)(a) (see CONTEMPT OF COURT vol 9(1) (Reissue) PARA 431) which are held in private: Magistrates' Courts Act 1980 s 145(1)(ga) (added by Children Act 2004 s 62(4)).

TEXT AND NOTES 22, 27--Heads (4), (7) omitted. 1980 Act s 145(1)(f), (i) repealed: Courts Act 2003 Sch 8 para 246(2), Sch 10.

TEXT AND NOTES 28-31--Repealed: *ibid* Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(1) IN GENERAL/589. Limitation of time.

### **589. Limitation of time.**

Except as otherwise expressly provided by any enactment<sup>1</sup>, a magistrates' court<sup>2</sup> must not try an information or hear a complaint<sup>3</sup> unless the information was laid or the complaint made within six months from the time when the offence<sup>4</sup> was committed or the matter of complaint arose<sup>5</sup>.

Neither this restriction<sup>6</sup> nor any other enactment imposing a time limit on the power of a magistrates' court to try an information summarily or impose a limitation on the time for taking summary proceedings<sup>7</sup> applies to any indictable offence<sup>8</sup>.

Where money is payable by instalments, the time limit runs from the demand of the instalment<sup>9</sup>. In the case of an offence, the day on which it is committed is excluded in computing the time limit<sup>10</sup>.

The time limit applies where the offence is aiding and abetting a summary offence<sup>11</sup>. The time limit does not, however, apply to continuing offences<sup>12</sup>, or to the recovery of arrears under a magistrates' court maintenance order<sup>13</sup>. There is no time limit on the trial of an offence which is triable either way<sup>14</sup>.

1 As to the meaning of 'enactment' see PARA 505 note 16 ante. Examples of exceptions are:

- 25 (1) offences in respect of the employment of children abroad (see the Children and Young Persons Act 1933 s 26(3); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 779);
- 26 (2) offences under the Transport Act 1968 s 99(5) (as amended) (see the Road Traffic Act 1960 s 244 (as amended); and ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1426);
- 27 (3) offences under the Trade Descriptions Act 1968 (see s 19 (as amended); and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 499);
- 28 (4) offences under the Health and Safety at Work etc Act 1974 (see s 34 (as amended); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 855);
- 29 (5) offences under the Solicitors Act 1974 s 21 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 591), s 22 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 595) or s 23 (as substituted and amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 592) (see s 26 (as amended); and LEGAL PROFESSIONS vol 65 (2008) PARA 591 et seq);
- 30 (6) offences under the Customs and Excise Acts (see the Customs and Excise Management Act 1979 s 146A (as added); and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 1198);
- 31 (7) offences under the Road Traffic Act 1988 s 92(10) (as added) (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 455), s 94(3), (3A) (as added) (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 457), s 94A (as added and amended) (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 463), s 99 (as amended) (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARAS 468-472), s 99B(11) (as added) (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 474), s 103(1)(a), (b) (as added) (see ROAD TRAFFIC

- vol 40(1) (2007 Reissue) PARA 481), s 143 (as amended) (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 937), s 174(1) (as amended), s 174(5) (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 1013), s 175 (as amended; prospectively substituted) (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 1014), and the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 1(5) (see the Road Traffic (Offenders) Act 1988 s 6(1)-(4), (6), Sch 1 (as amended); and ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 1031);
- 32 (8) proceedings under the Food Safety Act 1990 (see s 34; and FOOD vol 18(2) (Reissue) PARA 459);
- 33 (9) proceedings under the Vehicle Excise and Registration Act 1994 s 29 (as amended) (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 777), s 34 (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 782), s 35A (as added and amended) (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 784), s 37 (as amended) (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 785) (see s 47(2) (as amended); and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 793);
- 34 (10) offences under the Merchant Shipping Act 1995 (see s 274; and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1100);
- 35 (11) a complaint for a judgment summons in civil debt proceedings (see the Magistrates' Courts Act 1980 s 93(2); and PARA 831 post).

Where a statute simply provides that penalties must be recovered within a certain time, the words of the provision must be complied with (*R v Mainwaring* (1858) 27 LJMC 278), but where, in addition, the statute prescribes observance of the procedure of the Summary Jurisdiction Acts, it is sufficient if proceedings are brought within six months (*Morris v Duncan* [1899] 1 QB 4, DC). As to friendly societies see also *Mackie v Fox* (1911) 75 JP 470, DC.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 As to the hearing of complaints see PARA 681 et seq post. Where the cause of complaint is non-payment of money due, and the cause of complaint is complete, a fresh demand will not revive the right to take proceedings: *Harpin v Sykes* (1885) 1 TLR 307, DC. In such cases the proceedings must be brought within six months of the original demand if the cause of complaint is then complete: *East London Waterworks Co v Charles* [1894] 2 QB 730, DC; *Elliott v Russell* [1902] 2 KB 748, DC. See also *Grece v Hunt* (1877) 2 QBD 389, DC; *Jacomb v Dodgson* (1863) 32 LJMC 113; and *Simcox v Handsworth Local Board* (1881) 8 QBD 39, DC. Where the claim is for payment of the costs of an appeal to the Crown Court, time runs from the completion of the taxation and not from the date of the Crown Court order directing payment: *McVittie v Rennison* [1941] 1 KB 96, DC (a case of an appeal to quarter sessions).

4 As to the meaning of 'offence' see PARA 522 note 4 ante.

5 Magistrates' Courts Act 1980 s 127(1). This does not restrict the period within which a summons may issue: *R v Fairford Justices, ex p Brewster* [1976] QB 600, [1975] 2 All ER 757, DC. Its purpose is to ensure the prompt trial of summary offences: *R v Newcastle-upon-Tyne Justices, ex p John Bryce (Contractors) Ltd* [1976] 2 All ER 611, [1976] 1 WLR 517, DC. It is undesirable to leave the laying of the information until the last possible moment: *R v Blackburn Justices, ex p Holmes* (1999) 164 JP 163, [2000] Crim LR 300, DC. Where doubt is raised, it is for the prosecutor to satisfy the court that the information was laid in time: *Lloyd v Young* [1963] Crim LR 703, DC. It has been held under the Summary Jurisdiction (Married Women) Act 1895 (see now the Domestic Proceedings and Magistrates' Courts Act 1978; and MATRIMONIAL AND CIVIL PARTNERSHIP LAW) that the limitation does not apply where the charge is desertion: *Heard v Heard* [1896] P 188, DC. The time limit does, however, apply to civil debt proceedings: see eg *Mackie v Fox* (1911) 75 JP 470, DC; *R (O'Reilly) v Fermanagh Justices* [1904] 2 IR 18, Ir CA; and PARA 826 post.

An information may be properly laid within the time limit notwithstanding that it is not in the prescribed form: see *R v Kennet Justices, ex p Humphrey and Wyatt* [1993] Crim LR 787, DC. An information is laid when it is received at the office of the clerk to the justices by a member of the staff who is authorised to receive it: *R v Manchester Stipendiary Magistrate, ex p Hill* [1983] 1 AC 328, sub nom *Hill v Anderton* [1982] 2 All ER 963, HL. An information is laid in time where it is fed into a computer at a police station within the time limit but is printed out at the magistrates' court after the expiry of the time limit: *R v Pontypridd Juvenile Court, ex p B* (1988) 153 JP 213, DC. An information laid for the purpose of effecting an arrest is an information within the meaning of the Magistrates' Courts Act 1980 s 127 and the prosecution will commence at that time: *R v Enfield Magistrates' Court, ex p Caldwell* (1996) 161 JP 336, DC.

An information may be amended after the six-month period if it has been laid within that period, even to allege a different offence or offences, provided that the different offences allege the 'same misdoing' as the original offence and the amendment can be made in the interests of justice: *R v Scunthorpe Justices, ex p McPhee and Gallagher* (1998) 162 JP 635. See also *R v Thames Magistrates' Court, ex p Stevens* (2000) 164 JP 233, DC.

The issue of an information before a decision to prosecute has been taken, in order to comply with the requirements as a protective measure, may amount to an abuse of process: *R v Brentford Justices, ex p Wong* [1981] QB 445, [1981] 1 All ER 884, DC.

In the case of a parent's application for a contact order, the matter of complaint arises when the local authority serves notice of the termination or refusal of contact: see *Y v Kirklees Metropolitan Borough Council* [1985] FLR 927. As to contact orders see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 251.

The entering of a plea of not guilty does not mark the commencement of the trial for limitation purposes: *Quazi v DPP* (1988) 152 JP 385, DC.

If the justices have already made an express finding when it is discovered that a summons was issued out of time, a verdict on an alternative procedurally valid summons may be returned: *R v Haywards Heath Justices, ex p White* (2000) 164 JP 629.

In the application of the Magistrates' Courts Act 1980 to civil contempt proceedings under s 63(3) (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq), where the proceedings are taken by way of complaint for an order s 127 does not apply to the complaint: Contempt of Court Act 1981 s 17(2), Sch 3 para 2.

6 See the Magistrates' Courts Act 1980 s 127(2)(a).

7 See *ibid* s 127(2)(b), which includes enactments which impose a time limit that applies only in certain circumstances (eg where the proceedings are not instituted by or with the consent of the Director of Public Prosecutions or some other specified authority): s 127(3). As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

8 See *ibid* s 127(2). Where, however, as regards any indictable offence, there is imposed by any enactment (however framed or worded, and whether falling within s 127(2)(b) (see the text to note 7 *supra*) or not) a limitation on the time for taking proceedings on indictment for that offence no summary proceedings for that offence may be taken after the latest time for taking proceedings on indictment: s 127(4). For the meaning of 'indictable offence' see PARA 653 post.

9 *Prescott v Nicholson* (1889) 53 JP 597, DC.

10 *Radcliffe v Bartholomew* [1892] 1 QB 161, DC; *Marren v Dawson Bentley & Co Ltd* [1961] 2 QB 135, [1961] 2 All ER 270; and see TIME vol 97 (2010) PARA 336. By statute the time limit is sometimes made to take effect from the first discovery of the offence: see eg the Children and Young Persons Act 1933 s 26(3) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 779); the Road Traffic Act 1960 s 244 (as amended); the Health and Safety at Work etc Act 1974 s 34(3) (see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 855); the Road Traffic Offenders Act 1988 s 6(1)-(4), (6), Sch 1 (as amended) (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 1031); the Vehicle Excise and Registration Act 1994 s 47(2) (as amended) (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 793); and see *Verney v Mark Fletcher & Sons Ltd* [1909] 1 KB 444, DC; *Ross v English Steel Corpn Ltd* [1945] 2 All ER 606, DC; *Felton v Heal* [1920] 3 KB 1, DC.

11 *Gould & Co v Houghton* [1921] 1 KB 509, DC; *Homolka v Osmond* [1939] 1 All ER 154, DC.

12 *Higgins v Northwich Union Guardians* (1870) 22 LT 752 (smoke nuisance); *Rumball v Schmidt* (1882) 8 QBD 603, DC (addition built on to house); *R v Catholic Life and Fire Assurance and Annuity Institution Ltd* (1883) 48 LT 675, DC (company's failure to make statutory returns); *Metropolitan Board of Works v Anthony & Co* (1884) 49 JP 229, DC (erection of wooden fence); *Ulverstone Union Guardians v Park* (1889) 53 JP 629, DC (liability for maintenance); *LCC v Worley* [1894] 2 QB 826, DC (building at prohibited height); *Ex p Burnby* [1901] 2 KB 458, DC (permitting brothel); *Chepstow Electric Light and Power Co v Chepstow Gas and Coke Consumers' Co* [1905] 1 KB 198, DC (manner of laying electric lines); *Rowley v TA Everton & Sons Ltd* [1941] 1 KB 86, [1940] 4 All ER 435 (quarry machinery improperly fenced); *R v Chertsey Justices, ex p Franks* [1961] 2 QB 152, [1961] 1 All ER 825 (failure to comply with planning enforcement notice); *Mitchell v Lepine-Smith* (1976) 141 JP 510, DC (failure to send certificate by a specified time); *Camden London Borough Council v Marshall* [1996] 1 WLR 1345, DC (failure to execute works in accordance with notice). See *Stray v Docker* [1944] KB 351, [1944] 1 All ER 367, DC (extortionate rent); and cf *R v Wimbledon Justices, ex p Derwent* [1953] 1 QB 380, [1953] 1 All ER 390, DC. See also the Children and Young Persons Act 1933 s 14(4); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1277. It has been held that depositing litter contrary to the Litter Act 1958 s 1(1) (repealed; see now the Environmental Protection Act 1990 s 87; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 383)) was not a continuing offence: *Vaughan v Biggs* [1960] 2 All ER 473, [1960] 1 WLR 622, DC. Nor is unlawfully remaining in this country for a non-patrial: *Gurdev Singh v R* [1974] 1 All ER 26, [1973] 1 WLR 1444, DC.

13 See the Magistrates' Courts Act 1980 s 93(1) (as amended), (2); and PARA 831 post.

14 *Kemp v Liebherr-GB Ltd* [1987] 1 All ER 885, [1987] 1 WLR 607, DC.

## UPDATE

### 589 Limitation of time

NOTE 5--*Lloyd*, cited, applied: *Atkinson v DPP* [2004] EWHC 1457 (Admin), [2004] 3 All ER 971, DC.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(1) IN GENERAL/590. Same justices to act throughout.

### 590. Same justices to act throughout.

Subject to exceptions in the case of a trial adjourned after the accused has been convicted<sup>1</sup> and in the case of an adjournment of matrimonial proceedings after the court has decided that it is satisfied of any ground<sup>2</sup> of application for financial provision<sup>3</sup>, the justices composing the court before which any proceedings take place must be present during the whole of the proceedings<sup>4</sup>. If any justice absents himself during the course of the proceedings, he must cease to act further in them, but if the remaining justices are enough to satisfy the statutory requirements<sup>5</sup> the proceedings may continue before a court composed of those justices<sup>6</sup>.

The justice who issued the warrant or summons need not be present at the hearing<sup>7</sup>, and neither his death nor the fact that he has ceased to hold office invalidates the warrant or summons<sup>8</sup>.

Where the justice or justices before whom the hearing is begun is or are unable to proceed with the hearing, the witnesses must be resworn and must give their evidence again before a differently constituted court<sup>9</sup>.

1 See the Magistrates' Courts Act 1980 s 121(7); and PARA 711 post.

2 As to these grounds see the Domestic Proceedings and Magistrates' Courts Act 1978 s 1 (as amended); and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 53 (2009) PARA 553.

3 See *ibid* s 31(1); and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 898.

4 Magistrates' Courts Act 1980 s 121(6). See *Re Guerin* (1888) 58 LJM 42, DC; *Lewis v Lewis* (1928) 92 JP 88, DC; *Fulker v Fulker* [1936] 3 All ER 636, DC; *Joseph v Joseph* [1948] LJR 513, DC; *Bolton v Bolton* [1949] 2 All ER 908, DC; *Munday v Munday* [1954] 2 All ER 667, [1954] 1 WLR 1078, DC; *R v Manchester Justices, ex p Burke* (1961) 125 JP 387, DC.

5 Ie the requirements of the Magistrates' Courts Act 1980 s 121(1)-(6) (as amended): see the text and notes *supra*; and PARAS 538 ante, 863 post.

6 *Ibid* s 121(6) proviso.

7 This is implicit in *ibid* s 1 (as amended) and s 51, which enable a justice to issue a summons or warrant requiring a person to appear or be brought before 'a magistrates' court' for the area: see PARAS 522-523 ante, 678 post.

8 *Ibid* s 124.

9 *R v Walton etc Justices, ex p Dutton* (1911) 75 JP 558, DC; and cf *Herring v Herring* (1946) 110 JP 294, DC.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(2) PETTY SESSIONS/(i) Areas and Divisions/591. Petty sessions areas.

## **(2) PETTY SESSIONS**

### **(i) Areas and Divisions**

#### **591. Petty sessions areas.**

For the purposes of the exercise of jurisdiction, England and Wales are divided into petty sessions areas<sup>1</sup>. Petty sessions areas and their names are as specified by the Lord Chancellor<sup>2</sup> by order made by statutory instrument<sup>3</sup>. Each petty sessions area consists of either the whole of a commission area<sup>4</sup>, or an area wholly included within a commission area<sup>5</sup>.

In relation to the exercise of jurisdiction in family proceedings, provision is made for the hearing by a magistrates' court for an inner London petty sessions area<sup>6</sup> of family proceedings which could be heard before a relevant court<sup>7</sup> for any other such area<sup>8</sup>.

1 Justices of the Peace Act 1997 s 4(1) (s 4 substituted by the Access to Justice Act 1999 s 75(1)). For the meaning of 'England' see PARA 501 note 7 ante; and for the meaning of 'Wales' see PARA 501 note 7 ante.

2 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 Justices of the Peace Act 1997 s 4(2) (as substituted: see note 1 supra). As to the petty sessions areas for England and Wales see the Petty Sessions Areas Order 1999, SI 1999/3009 (amended by SI 2001/694). As to the alteration of petty sessions areas see PARA 592 post.

4 As to commission areas see PARA 507 ante.

5 Justices of the Peace Act 1997 s 4(3) (as substituted: see note 1 supra).

6 For these purposes, 'inner London petty sessions area' means any petty sessions area falling wholly or partly within the area consisting of the inner London boroughs and the City of London: Magistrates' Courts Act 1980 s 70(3) (definition amended by the Access to Justice Act 1999 s 76(2), Sch 10 paras 33, 34).

7 For these purposes, 'relevant court' means a magistrates' court when composed for the purpose of exercising jurisdiction to hear family proceedings: Magistrates' Courts Act 1980 s 70(3) (definition amended by the Children Act 1989 s 92, Sch 11 para 8).

8 See the Magistrates Courts Act 1980 s 70 (as amended). A relevant court for an inner London petty sessions area, in addition to hearing proceedings which, apart from s 70(2) (as amended), may be heard by a relevant court for that area, has jurisdiction to hear proceedings which could be heard before a relevant court for any other such area, but must not exercise the jurisdiction so conferred except in such cases or classes of case as may be determined by the magistrates' courts committee whose area consists of or includes that petty sessions area: s 70(1) (amended by the Police and Magistrates' Courts Act 1994 s 91, Sch 8 para 30). A magistrates' court for an inner London petty sessions area must not hear any family proceedings if the magistrates' courts committee whose area consists of or includes that petty sessions area so determine: Magistrates' Courts Act 1980 s 70(2) (amended by the Children Act 1989 Sch 11 para 8; and the Police and Magistrates' Courts Act 1994 Sch 8 para 30).

### **UPDATE**

#### **591-594 Areas and Divisions**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. Petty sessions areas are replaced by local justice areas: see PARA 507.

#### **591 Petty sessions areas**

TEXT AND NOTES 6-8--1980 Act s 70 amended in consequence of abolition of commission areas and petty sessions areas (see PARA 507): Courts Act 2003 Sch 8 para 216.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(2) PETTY SESSIONS/(i) Areas and Divisions/592. Alteration of petty sessions areas.

## 592. Alteration of petty sessions areas.

A magistrates' courts committee<sup>1</sup> may at any time submit to the Lord Chancellor<sup>2</sup> a draft order making an alteration of a petty sessions area<sup>3</sup> for which it is the committee<sup>4</sup>. A magistrates' courts committee must, if directed to do so by the Lord Chancellor, consider whether any alteration is required to any petty sessions area for which it is the committee and, on completion of its consideration, submit to the Lord Chancellor either a draft order<sup>5</sup> or a report giving reasons for no alteration<sup>6</sup>. The Lord Chancellor may only make an order<sup>7</sup> which makes an alteration to a petty sessions area<sup>8</sup> where:

- 38 (1) the magistrates' courts committee for the area has submitted a draft order to him<sup>9</sup> and the alteration made by the order is in the terms of the draft or subject only to such modifications as the Lord Chancellor thinks fit<sup>10</sup>;
- 39 (2) a magistrates' courts committee fails to comply within six months with a direction of the Lord Chancellor<sup>11</sup> or he is dissatisfied with the draft order or report submitted in pursuance of such a direction<sup>12</sup>; or
- 40 (3) the alteration is consequential on an order specifying commission areas<sup>13</sup> or magistrates' courts committee areas<sup>14</sup>.

Before submitting to the Lord Chancellor a draft order or a report<sup>15</sup> about any petty sessions area, a magistrates' courts committee<sup>16</sup>:

- 41 (a) must consult every relevant council<sup>17</sup>, and the magistrates<sup>18</sup> for the area<sup>19</sup>; and
- 42 (b) in the case of a draft order which relates to any district which is not a unitary district, must, after complying with head (a) above, send a copy of its proposals to every relevant district council<sup>20</sup> and take into consideration any objections made in the prescribed manner<sup>21</sup> and within the prescribed time<sup>22</sup>.

A magistrates' courts committee submitting to the Lord Chancellor a draft order or a report<sup>23</sup> must comply with any prescribed requirements as to notice<sup>24</sup>. The committee must send notice of the submission to certain persons<sup>25</sup>, publish the notice of the submission in at least one newspaper circulating in the area to which the draft order or report relates<sup>26</sup>, and post and keep it posted for a month at or near the entrance to every petty-session courthouse<sup>27</sup> in the area<sup>28</sup>. This notice must contain a statement of the effect of the draft order or report<sup>29</sup>, information as to the places and times at which a copy of the draft order or report may be inspected<sup>30</sup>, and a statement as to the manner in which and the time within which any objections for consideration by the Lord Chancellor are required to be made<sup>31</sup>.

Before making an order<sup>32</sup> which makes an alteration of a petty sessions area otherwise than in accordance with a draft<sup>33</sup> submitted to him by the magistrates' courts committee, the Lord Chancellor must send a copy of his proposals to the magistrates' courts committee, every relevant council, the magistrates for the area and, if the proposals relate to any district which is not a unitary district, every relevant district council<sup>34</sup>. The Lord Chancellor must take into consideration any objections made in the prescribed manner and within the prescribed time<sup>35</sup> and may cause a local inquiry to be held<sup>36</sup>.

1 As to magistrates' courts committees see PARA 612 et seq post.



2 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 As to petty sessions areas see PARA 591 ante.

4 Justices of the Peace Act 1997 s 33(1) (s 33 substituted by the Access to Justice Act 1999 s 75(2)).

5 Ie under the Justices of the Peace Act 1997 s 33(1) (as substituted): see the text to notes 1-4 supra.

6 Ibid s 33(2) (as substituted: see note 4 supra).

7 Ie under ibid s 4(2) (as substituted): see PARA 591 ante. An order made under s 4(2) (as substituted) which makes an alteration to a petty sessions area may contain such consequential and transitional provisions as appear to the Lord Chancellor to be necessary or expedient: s 33(4) (as substituted: see note 4 supra). Orders under s 4(2) (as substituted) or having effect under it are local in nature and are therefore not recorded in this work.

8 For the purposes of ibid s 33 (as substituted), and s 34 (as amended), references to the alteration of a petty sessions area include (as well as a change in the boundaries of the area): (1) the combination of the area with another petty sessions area; (2) the division of the area between two or more petty sessions areas; and (3) changing the name of the area: s 33(5) (as substituted: see note 4 supra).

9 Ie under ibid s 33(1) (as substituted): see the text to notes 1-4 supra.

10 Ibid s 33(3)(a) (as substituted: see note 4 supra).

11 Ie under ibid s 33(2) (as substituted): see the text to notes 5-6 supra.

12 Ibid s 33(3)(b) (as substituted: see note 4 supra).

13 Ie under ibid s 1(2) (as substituted): see PARA 507 ante.

14 Ibid s 33(3)(c) (as substituted: see note 4 supra). As to orders specifying the areas of magistrates' courts committees see s 27A(2) (as added); and PARA 613 post. As to magistrates' courts committee areas see PARA 612 et seq post.

15 Ie under ibid s 33 (as substituted): see the text and notes 1-14 supra.

16 Ibid s 34(1) (amended by the Access to Justice Act 1999 s 75(3)(a)).

17 'Relevant council', in relation to an order, a draft order or a report, means any council of a county, a county borough, a unitary district, or a London borough, which includes all or part of the area to which the order, draft order or report relates: Justices of the Peace Act 1997 s 34(5)(a). For the meaning of 'unitary district' see PARA 564 note 9 ante. As to areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARAS 24 et seq, 37 et seq.

18 As to the meaning of 'magistrate' see PARA 501 ante.

19 Justices of the Peace Act 1997 s 34(1)(a) (amended by the Access to Justice Act 1999 s 106, Sch 15 Pt V).

20 'Relevant district council', in relation to an order or draft order about any area, means any council of a district, other than a unitary district, which includes all or part of the area: Justices of the Peace Act 1997 s 34(5)(b).

21 Ie prescribed by regulations made by the Lord Chancellor by statutory instrument: ibid s 34(5)(c). At the date at which this volume states the law no such regulations had been made under s 34 (as amended), but by virtue of s 73(1), Sch 4 para 1(2), the Petty Sessions Areas (Divisions and Names) Regulations 1988, SI 1988/1698 (amended by SI 1992/709; SI 1996/576; SI 2001/609) have effect as if so made.

22 Justices of the Peace Act 1997 s 34(1)(b). Any objections to the proposals of a committee sent to the authority must be made in writing and sent to the clerk to the committee within one month of the date when a copy of the proposals is sent: see the Petty Sessions Areas (Divisions and Names) Regulations 1988, SI 1988/1698, reg 4.

23 See note 15 supra.

24 Justices of the Peace Act 1997 s 34(2).

- 25 As to the persons who must receive notice see the Petty Sessions Areas (Divisions and Names) Regulations 1988, SI 1988/1698, reg 5(1)(a) (amended by SI 1992/709; SI 1996/576; and SI 2001/609).
- 26 Petty Sessions Areas (Divisions and Names) Regulations 1988, SI 1988/1698, reg 5(1)(b).
- 27 For the meaning of 'petty-sessional courthouse' see PARA 584 ante.
- 28 Petty Sessions Areas (Divisions and Names) Regulations 1988, SI 1988/1698, reg 5(1)(c).
- 29 Ibid reg 5(2)(a).
- 30 Ibid reg 5(2)(b).
- 31 Ibid reg 5(2)(c) (amended by SI 1992/709). Any objections must be made in writing and sent to the Lord Chancellor, at an address and by a date which must be specified in any notice and which must not be less than one month from the date when the notice is sent or first published or posted: see the Petty Sessions Areas (Divisions and Names) Regulations 1988, SI 1988/1698, reg 6 (amended by SI 1992/709).
- 32 Ie under the Justices of the Peace Act 1997 s 4(2) (as substituted): see PARA 591 ante.
- 33 An order is to be taken to be made in accordance with a draft order if it is made in terms of the draft order or any departures from the draft order do not, in the opinion of the Lord Chancellor, effect important alterations in the draft order: ibid s 34(5)(d).
- 34 Ibid s 34(3) (amended by the Access to Justice Act 1999 ss 75(3)(b), 106, Sch 15 Pt V).
- 35 Objections must be made, where the objection is made by the committee, within one month of the date when a copy of the Lord Chancellor's proposals is sent to the objector, or in any other case within one month from the date when notice of the Lord Chancellor's proposals is first published in a newspaper circulating in the area: see the Petty Sessions Areas (Divisions and Names) Regulations 1988, SI 1988/1698, reg 7 (amended by SI 1992/709; SI 1996/576).
- 36 Justices of the Peace Act 1997 s 34(4) (amended by the Access to Justice Act 1999 s 75(3)(c)). The inquiry comes within the jurisdiction of the Council on Tribunals and reasons for decisions must be given: see the Tribunals and Inquiries Act 1992 ss 10, 16(2) (both as amended); the Interpretation Act 1978 s 17(2)(a); the Tribunals and Inquiries (Discretionary Inquiries) Order 1975, SI 1975/1379, arts 2, 3, 4, Schedule para 26; and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 15. As to the functions of the Council on Tribunals see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 56-57.

## UPDATE

### 591-594 Areas and Divisions

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. Petty sessions areas are replaced by local justice areas: see PARA 507.

### 592 Alteration of petty sessions areas

TEXT AND NOTES 16-36--The Lord Chancellor's functions under the 1997 Act s 34 (repealed with savings) are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(2) PETTY SESSIONS/(i) Areas and Divisions/593. Provision of petty-sessional courthouse.

### 593. Provision of petty-sessional courthouse.

The paying authority<sup>1</sup> or authorities in relation to any magistrates' courts committee<sup>2</sup> for an area outside Greater London must provide the petty-sessional courthouses<sup>3</sup> and other accommodation, and the goods and services<sup>4</sup>, proper for the performance of the functions of: (1) the magistrates<sup>5</sup> for the magistrates' courts committee area<sup>6</sup>; (2) the magistrates' courts committee; (3) any other committee of the magistrates for that area; or (4) the justices' clerks<sup>7</sup> for any part of the magistrates' courts committee area<sup>8</sup>. Two or more paying authorities may arrange for accommodation, goods or services provided by one of them to be used also as if provided by the other or each of the others<sup>9</sup>.

The Greater London Magistrates' Courts Authority<sup>10</sup> must provide such petty-sessional courthouses and other accommodation, and such goods and services, as it may determine proper for the performance of its functions and those of: (a) the magistrates for Greater London; (b) any committee of the magistrates for Greater London; and (c) the justices' clerks for any part of Greater London<sup>11</sup>.

Licensed premises may not be used as a petty-sessional courthouse<sup>12</sup>.

1 For the meaning of 'paying authority' see PARA 642 note 1 post.

2 As to magistrates' courts committees see PARA 612 et seq post.

3 For the meaning of 'petty-sessional courthouse' see PARA 584 ante.

4 As to the power of the Lord Chancellor to require a magistrates' courts committee to obtain specified goods or services or goods or services of a specified description see PARAS 645, 649 post. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

5 As to the meaning of 'magistrate' see PARA 501 ante.

6 As to magistrates' courts committee areas see PARA 612 et seq post.

7 As to justices' clerks see PARA 631 et seq post.

8 Justices of the Peace Act 1997 s 55(1) (amended by the Access to Justice Act 1999 s 83(3), Sch 12 paras 9, 16): see further PARA 642 post. However, there are limits on the amount of expenditure that may be incurred or payments that may be made: see the Justices of the Peace Act 1997 s 55(7); the Magistrates' Courts (Grants) Regulations 1998, SI 1998/2165; and PARA 642 post.

9 See the Justices of the Peace Act 1997 s 55(9); and PARA 642 post.

10 As to the Greater London Magistrates' Courts Authority see PARA 616 post.

11 Justices of the Peace Act 1997 s 59A(1) (s 59A added by the Access to Justice Act 1999 s 83(2)): see further PARA 646 post.

12 Licensing Act 1964 s 190(1).

## UPDATE

### 591-594 Areas and Divisions

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. Petty sessions areas are replaced by local justice areas: see PARA 507.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(2) PETTY SESSIONS/(i) Areas and Divisions/594. Times for holding courts.

### 594. Times for holding courts.

A petty-sessional court may be held at any time and without notice, but it is the practice for the days on which petty sessions courts will be held to be agreed in advance and for the justices to assemble regularly at a customary time<sup>1</sup> on those days in petty sessions<sup>2</sup>.

1 Justices who sat as a magistrates' court to deal with a particular case at the unusual hour of 9 am, when press and public were not expected to be present and in fact were not present, were criticised by Lord Goddard in a report of an inquiry held by him by direction of the Lord Chancellor and the Home Secretary: see the *Report of an Enquiry by Lord Goddard* (20 July 1945); and (1945) 109 JP Jo 361.

2 As to dates for licensing sessions see the Betting, Gaming and Lotteries Act 1963 ss 2(2), 9 (as amended), Sch 1 paras 3, 4; the Licensing Act 1964 s 2 (as amended), Sch 1 Pt II (as amended); and the Gaming Act 1968 s 11(1), Sch 2 para 2A (as added).

## **UPDATE**

### **591-594 Areas and Divisions**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. Petty sessions areas are replaced by local justice areas: see PARA 507.

### **594 Times for holding courts**

NOTE 2--Betting, Gaming and Lotteries Act 1963 Sch 1 repealed: Gambling Act 2005 s 356(3)(f), Sch 4.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(2) PETTY SESSIONS/(ii) Size and Chairmanship of Bench/A. CONSTITUTION OF MAGISTRATES' COURTS/595. Rules as to chairmanship and size of bench.

## **(ii) Size and Chairmanship of Bench**

### **A. CONSTITUTION OF MAGISTRATES' COURTS**

#### **595. Rules as to chairmanship and size of bench.**

Rules<sup>1</sup> may make provision as to the manner in which provisions relating to the chairmanship and size of bench<sup>2</sup> are to be administered, and in particular<sup>3</sup>:

- 43 (1) as to the arrangements to be made for securing the presence on the bench of enough, but not more than enough, justices<sup>4</sup>;
- 44 (2) as to the term of office and the procedure at an election of the chairman or a deputy chairman of the justices for a petty sessions area<sup>5</sup> (including any procedure for nominating candidates at any such election), and the number of deputy chairmen to be elected for any such area<sup>6</sup>;
- 45 (3) as to training courses to be completed by justices before they may preside in court<sup>7</sup>;
- 46 (4) as to the approval of justices, by committees of justices constituted in accordance with the rules, before they may preside in court, as to the justices who may be so approved and as to the courts to which the approval relates<sup>8</sup>; and

- 47 (5) as to circumstances in which a justice may preside in court even though requirements imposed by virtue of head (3) or head (4) above are not satisfied in relation to him<sup>9</sup>.

The number of justices<sup>10</sup> sitting to deal with a case as a magistrates' court<sup>11</sup>, other than such a court sitting as a youth court<sup>12</sup>, family proceedings court<sup>13</sup>, or a licensing or betting licensing committee<sup>14</sup>, must not be greater than three<sup>15</sup>. To avoid an equal division of opinion it is desirable that an odd number should sit<sup>16</sup>. There are special provisions for family proceedings<sup>17</sup> and youth courts<sup>18</sup>.

1 No rules may be made under the Justices of the Peace Act 1997 s 24 (as amended) (see the text and notes *infra*) except on the advice of, or after consultation with, the rule committee established under the Magistrates' Courts Act 1980 s 144 (as amended) (see PARA 588 ante): Justices of the Peace Act 1997 s 24(4). Rules under s 24 (as amended) are made by the Lord Chancellor by statutory instrument, and are subject to annulment in pursuance of a resolution of either House of Parliament: s 24(5). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

As to the rules made under s 24 (as amended) see the Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, which were made after consultation with the rule committee appointed under the Magistrates' Courts Act 1980 s 144 (as amended) (see PARA 588 ante).

2 In the Justices of the Peace Act 1997 ss 22, 24 (both as amended): see PARA 596 et seq post.

3 Ibid s 24(2).

4 Ibid s 24(2)(a).

5 As to petty sessions areas see PARAS 591-592 ante.

6 Justices of the Peace Act 1997 s 24(2)(b). As to the term of office of chairman and deputy chairman see PARA 600 post; as to the nomination and election of chairmen and deputy chairmen see PARA 596 post.

7 Ibid s 24(2)(c).

8 Ibid s 24(2)(d).

9 Ibid s 24(2)(e).

10 For the purposes of the Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, 'justice' means a justice of the peace whose name has not been entered in the supplemental list and, in relation to a petty sessions area, a justice who ordinarily acts in and for that area: r 2(a). As to the entry of a justice's name on the supplemental list see PARA 519 ante.

11 For the meaning of 'magistrates' court' see PARA 583 ante.

12 As to the constitution of youth courts see PARAS 608-611 post.

13 As to the constitution of family proceedings courts see PARAS 603-307 post.

14 As to licensing and betting licensing committees see LICENSING AND GAMBLING vol 67 (2008) PARAS 40-42.

15 Justices of the Peace Act 1997 s 24(1) (amended by the Access to Justice Act 1999 s 106, Sch 15 Pt V); Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, r 3.

16 *Barnsley v Marsh* [1947] KB 672 at 676, [1947] 1 All ER 874 at 875, DC, per Lord Goddard CJ.

17 See PARA 603 post.

18 See PARAS 610-611 post.

## UPDATE

### 595-602 Constitution of Magistrates' Courts

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, SI 2002/193 (as amended) replaced by Justices of the Peace (Size and Chairmanship of Bench) Rules 2005, SI 2005/553; and Justices of the Peace (Training and Development Committee) Rules 2007, SI 2007/1609: see PARA 516.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(2) PETTY SESSIONS/(ii) Size and Chairmanship of Bench/A. CONSTITUTION OF MAGISTRATES' COURTS/596. Nomination and election of chairman and deputy chairman.

### **596. Nomination and election of chairman and deputy chairman.**

The justices<sup>1</sup> for each petty sessions area<sup>2</sup> must each year elect from among themselves a chairman and one or more deputy chairmen<sup>3</sup>. A secret ballot<sup>4</sup> must be held for the election of chairman and for the election of deputy chairman<sup>5</sup>.

A justice for a petty sessions area in respect of which the election is held may vote in the election if: (1) in the case of an election by postal ballot<sup>6</sup>, the justice is a justice for that petty sessions area on the date the notices seeking nominations are posted<sup>7</sup>; and (2) in the case of an election held at a meeting, the justice is a justice for that petty sessions area on the date of the meeting<sup>8</sup>.

The justices' chief executive<sup>9</sup> must give written notice<sup>10</sup> to each justice eligible to vote in a postal ballot<sup>11</sup>, notifying the recipient that he may submit to the justices' chief executive nominations in writing for the offices of chairman and deputy chairman<sup>12</sup>. Each nomination must be proposed and seconded by justices eligible to vote in a postal ballot and must contain the full names and signatures of the proposer, seconder and justice nominated<sup>13</sup>.

A justice may not be nominated without his consent<sup>14</sup>. If a justice nominated for election as chairman wishes, should he not be elected chairman, to be nominated for election as deputy chairman, his nomination must contain a statement to that effect signed by the proposer, seconder and justice nominated<sup>15</sup>.

Where only one justice is nominated for election as chairman, that justice is elected chairman (and his nomination, if any, to the office of deputy chairman must be treated as having been withdrawn)<sup>16</sup>. Where the number of justices nominated to the office of deputy chairman equals or is less than the number of offices available, those justices are elected to the office of deputy chairman<sup>17</sup>. If a chairman or deputy chairman is elected under this provision, the justices' chief executive must give written notice<sup>18</sup> to each justice eligible to vote in a postal ballot of the name of the justice or justices elected<sup>19</sup>.

Where a justice who has been nominated for election to the office of chairman or deputy chairman ceases to be a justice at any time after nomination up to (and including) the closing date for receipt of completed ballot papers, his nomination is treated as having been withdrawn when he ceased to be a justice<sup>20</sup>.

A nomination cannot be withdrawn after the closing date for receipt of completed ballot papers<sup>21</sup>.

Where:

- 48 (a) no nomination for the office of chairman is received or where all nominations for that office are withdrawn at any time up to (and including) the closing date for receipt of completed ballot papers; or

- 49 (b) fewer nominations for the office of deputy chairman are received than the number of deputy chairmen to be elected; or
- 50 (c) one or more nominations for the office of deputy chairman are withdrawn at any time up to (and including) the closing date for receipt of completed ballot papers with the result that the remaining number of nominations for that office falls below the number of deputy chairmen to be elected,

the justices must by secret ballot elect the chairman or the number of deputy chairmen that have still to be elected, at the election meeting<sup>22</sup>.

The right of magistrates to vote at an election of the chairman or a deputy chairman of the justices for a petty sessions area may<sup>23</sup> be restricted with a view to securing that the election is made by magistrates experienced as such in the area<sup>24</sup>.

1 For the meaning of 'justice' see PARA 595 note 10 ante.

2 As to petty sessions areas see PARAS 591-592 ante.

3 Justices of the Peace Act 1997 s 22(1); Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, r 4(1).

4 References to a ballot are references to a ballot conducted under the Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193: r 2(c).

5 Justices of the Peace Act 1997 s 22(1); Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, r 4(2). However, r 4(2) does not apply where, as the case may be, the chairman or all the deputy chairmen required to fill the number of offices available have been elected under r 5(8) (see the text and notes 16-17 infra): r 4(3).

6 References to a postal ballot are references to a postal ballot conducted under *ibid* r 6 (see PARA 597 post): r 2(d).

7 *Ibid* r 4(4)(a).

8 *Ibid* r 4(4)(b). As to election meetings see PARA 599 post.

9 'Justices' chief executive' in relation to a petty sessions area means the justices' chief executive for the magistrates' court committee area in which that petty sessions area falls and includes any person acting as such: *ibid* r 2(a). A justices' chief executive may, with the approval of the magistrates' courts committee for the area for which he is the justices' chief executive, appoint a nominee to perform some or all of his functions under the Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193: r 19. Where a justices' chief executive has appointed a nominee in accordance with r 19, references to a justices' chief executive must be read as references to his nominee in relation to the function or functions for which he was appointed nominee: r 2(b). As to the justices' chief executive generally see PARA 624 post.

10 The notice must: (1) specify a closing date for receipt of nominations; (2) specify the date, time and place of the election meeting; (3) be posted by first class post at least 28 days before the closing date for receipt of nominations (including the date of posting but excluding the closing date for receipt of nominations); and (4) not be posted earlier than 12 weeks, nor later than 9 weeks, before the date of the election meeting (including the date of posting but excluding the date of the election meeting): *ibid* r 5(2)(b)-(e).

11 *Ibid* r 5(1).

12 *Ibid* r 5(2)(a). The number of offices for which nominations may be made is determined under r 10(2)(d) (see PARA 599 post).

13 *Ibid* r 5(4). The justices' chief executive must satisfy himself that each nomination received fulfils these requirements, but must not disclose the names of proposers and seconders: r 5(5).

14 *Ibid* r 5(3).

15 *Ibid* r 5(6). If this statement is included in a nomination for chairman, the nomination must be treated as a nomination for the office of chairman and for the office of deputy chairman (but a justice may not hold both offices at the same time): r 5(7). See further PARA 507 note 16 post.

16 Ibid r 5(8)(a). Nominations withdrawn before the date of posting the ballot papers are disregarded when determining the number of nominations for this purpose: r 5(9). As to the conduct of a postal ballot see PARA 597 post.

17 Ibid r 5(8)(b), to which r 5(9) also applies: see note 16 supra. If a justice is elected to the office of deputy chairman under this provision and is subsequently elected chairman, he must not take up the office of deputy chairman and his nomination for that office is treated as having been withdrawn before the closing date for receipt of completed ballot papers: r 5(10).

18 The notice must be sent by first class post at least 28 days before the date of the election meeting (including the date of posting but excluding the date of the election meeting): ibid r 5(12).

19 Ibid r 5(11).

20 Ibid r 5(13).

21 Ibid r 5(14).

22 Ibid r 9, Schedule. See further, as to the procedure for elections at an election meeting, PARA 599 post.

23 Ie by rules made under the Justices of the Peace Act 1997 s 24 (as amended): see PARA 595 note 1 ante.

24 Ibid s 24(3).

## **UPDATE**

### **595-602 Constitution of Magistrates' Courts**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, SI 2002/193 (as amended) replaced by Justices of the Peace (Size and Chairmanship of Bench) Rules 2005, SI 2005/553; and Justices of the Peace (Training and Development Committee) Rules 2007, SI 2007/1609: see PARA 516.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(2) PETTY SESSIONS/(ii) Size and Chairmanship of Bench/A. CONSTITUTION OF MAGISTRATES' COURTS/597. Conduct of postal ballots.

#### **597. Conduct of postal ballots.**

Where nominations to the offices of chairman or deputy chairmen of a bench are received<sup>1</sup> and have not been withdrawn before the date of posting the ballot papers, the secret ballot<sup>2</sup> must be a postal ballot<sup>3</sup>. Where there is to be an election of chairman, or of deputy chairman or chairmen, the justices' chief executive<sup>4</sup> must prepare ballot papers which contain lists in alphabetical order of the justices nominated to those offices<sup>5</sup>. He must send by first class post to each justice eligible to vote in a postal ballot one ballot paper for each election<sup>6</sup>.

There must be at least 21 days between the date of posting the ballot papers and the closing date for receipt of completed ballot papers<sup>7</sup>, and at least seven days between the closing date for receipt of completed ballot papers and the date of the election meeting<sup>8</sup>.

Each justice who votes must cast a first choice vote<sup>9</sup>, and may cast a second or subsequent choice vote<sup>10</sup>. A justice who votes must return his ballot paper to the justices' chief executive by post or by hand<sup>11</sup>.



A ballot is not invalidated by reason of a ballot paper not being received by a justice eligible to vote in a postal ballot, or a completed ballot paper not being received by the justices' chief executive<sup>12</sup>.

There must be no disclosure as to how any justice voted in any ballot<sup>13</sup>.

The justices' chief executive must keep a note of the date that a ballot paper was received by him, and keep the ballot papers received for a period of 12 months commencing with the day after the election meeting<sup>14</sup>.

1     Ie under the Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, r 5: see PARA 596 ante.

2     Ie the secret ballot held under *ibid* r 4(2): see PARA 596 ante.

3     *Ibid* r 6(1).

4     As to the justices' chief executive see PARA 596 note 9 ante; and as to the justices' chief executive generally see PARA 624 post.

5     Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, r 6(2)(a), (b).

6     *Ibid* r 6(2)(c).

7     *Ibid* r 6(3)(a). The 21 days includes the date of posting but excludes the closing date for receipt of completed ballot papers: r 6(3)(a).

8     *Ibid* r 6(3)(b). This includes the closing date for receipt of completed ballot papers but excludes the date of the election meeting: r 6(3)(b). As to the election meeting see PARA 599 post.

9     See *ibid* r 6(4).

10    See *ibid* r 6(5).

11    *Ibid* r 6(6). Where a ballot paper (1) is returned unmarked; or (2) in a postal ballot, is not marked with a figure '1' or is marked in such a manner that there is doubt as to the order of preference of the voter; or (3) in a ballot held at a meeting, is marked in such a manner that there is doubt as to the identity of the justice or justices for whom the vote is cast, the ballot paper or the vote (as the case may be) must be rejected when the votes are counted: r 11(3). Comparable provision, having effect until 31 December 2002, is made by the Justices of the Peace (Size and Chairmanship of Bench) Rules 1995, SI 1995/971, r 10(1): see the Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, r 21(3).

12    *Ibid* r 6(7).

13    *Ibid* r 11(4). Comparable provision, having effect until 31 December 2002, is made by the Justices of the Peace (Size and Chairmanship of Bench) Rules 1995, SI 1995/971, r 10(2): see the Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, r 21(3).

14    *Ibid* r 11(5).

## UPDATE

### 595-602 Constitution of Magistrates' Courts

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, SI 2002/193 (as amended) replaced by Justices of the Peace (Size and Chairmanship of Bench) Rules 2005, SI 2005/553; and Justices of the Peace (Training and Development Committee) Rules 2007, SI 2007/1609: see PARA 516.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(2) PETTY SESSIONS/(ii) Size and Chairmanship of Bench/A. CONSTITUTION OF MAGISTRATES' COURTS/598. Determination of results of postal ballot.

### **598. Determination of results of postal ballot.**

As soon as practicable after the closing date for receipt of the completed ballot papers, the justices' chief executive (assisted if need be by staff of the magistrates' courts committee whose area consists of or includes the petty sessions area), must first determine the result of the postal ballot for election as chairman, and then determine the result of the postal ballot for election to the office of deputy chairman<sup>1</sup>. However, where a chairman is not elected before the election meeting, the result of the postal ballot for the election to the office of deputy chairman must not be determined until after a chairman has been elected at the election meeting<sup>2</sup>.

In relation to the election of chairman and, if only one deputy chairman is to be elected, the election of the deputy chairman, where a justice has received more than half of the first choice votes cast, that justice is elected<sup>3</sup>. Where all justices have received an equal number of first choice votes, the justices' chief executive must, at the election meeting, decide between them by lot<sup>4</sup>. If neither of these positions applies, then:

- 51 (1) the justice who received the least number of first choice votes is excluded from further consideration in the ballot<sup>5</sup>;
  - 52 (2) if the least number of first choice votes was received by two or more justices, all those justices are so excluded<sup>6</sup>;
  - 53 (3) if there is now only one continuing candidate<sup>7</sup>, that justice is elected<sup>8</sup>;
  - 54 (4) otherwise heads (a) to (d) below apply<sup>9</sup>, namely:
- 1 (a) a first choice vote cast by a voter for an excluded candidate is transferred to the continuing candidate, if any, who received that voter's next choice vote<sup>10</sup>;
  - 2 (b) if there is no such continuing candidate, the first choice vote cast for the excluded candidate is disregarded and is no longer counted as a first choice vote<sup>11</sup>;
  - 3 (c) if a continuing candidate now has received more than half of the first choice votes cast, that justice is elected<sup>12</sup>;
  - 4 (d) if all continuing candidates now have received an equal number of first choice votes, the justices' chief executive must, at the election meeting, decide between them by lot<sup>13</sup>.

Where neither head (c) nor head (d) above applies, the procedure in heads (1) to (4) above must be repeated until a chairman or deputy chairman (as the case may be) is elected<sup>14</sup>.

In relation to a postal ballot where more than one deputy chairman is to be elected, the requisite number of justices<sup>15</sup> who have received the most first choice votes are elected<sup>16</sup>. If less than the requisite number of justices have received first choice votes, that justice or those justices who have received first choice votes are elected<sup>17</sup>. If (i) two or more justices have received an equal number of first choice votes; and (ii) the addition of a first choice vote to those cast for any one or more of those justices is necessary to enable him or them to be elected, the justices' chief executive must, at the election meeting, decide between those justices by lot<sup>18</sup>. If any deputy chairmen remain to be elected, the justices must elect them at the election meeting<sup>19</sup>.

If a justice withdraws his nomination on the date of posting the ballot papers or at any time after that date up to (and including) the closing date for receipt of completed ballot papers, then all the votes for that justice are to be disregarded and no longer be counted as votes; if that justice received a first choice vote from a voter, the second choice vote given by that voter is

counted as a first choice vote; and if that justice received a second choice vote from a voter, the third choice vote given by that voter is counted as a second choice vote (and so on)<sup>20</sup>.

1 Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, r 6(8). As to the justices' chief executive see PARA 596 note 9 ante; and as to the justices' chief executive generally see PARA 624 post.

2 Ibid r 6(9).

3 Ibid r 7(1), (2). If a justice has been elected chairman and his name was included on a ballot paper for the election of deputy chairman (see PARA 596 ante), then (1) all the votes for him as deputy chairman are disregarded and may no longer be counted as votes; (2) if that justice received a first choice vote from a voter for the office of deputy chairman, the second choice vote given by that voter for the office of deputy chairman, if any, is counted as a first choice vote cast by that voter; and (3) if that justice received a second choice vote from a voter for the office of deputy chairman, the third choice vote given by that voter for the office of deputy chairman, if any, is counted as a second choice vote cast by that voter (and so on): r 11(1). As to first choice and subsequent choice votes see PARA 597 ante.

4 See ibid r 7(3), (8).

5 Ibid r 7(5)(a).

6 Ibid r 7(5)(b).

7 'Continuing candidate' means a justice who has not become an excluded candidate; and 'excluded candidate' means a justice who is excluded from further consideration in accordance with head (1) or head (2) in the text: ibid r 7(4).

8 Ibid r 7(5)(c).

9 Ibid r 7(5)(d).

10 Ibid r 7(6)(a). 'Next choice vote' means a second or subsequent choice vote for a continuing candidate, disregarding votes for excluded candidates; or, if there is more than one such vote, the one with the highest priority: r 7(4).

11 Ibid r 7(6)(b).

12 Ibid r 7(6)(c).

13 See ibid r 7(6)(d), (8).

14 Ibid r 7(7).

15 'Requisite number' means the number of deputy chairmen to be elected: ibid r 8(2).

16 Ibid r 8(1), (3).

17 Ibid r 8(4).

18 See ibid r 8(5), (6).

19 Ibid r 8(7), Schedule. See further, as to the procedure for elections at an election meeting, PARA 599 post. Such election must be by secret ballot unless Schedule para 3 (election to office of deputy chairman without ballot) applies: r 8(8).

20 Ibid r 11(2).

## UPDATE

### 595-602 Constitution of Magistrates' Courts

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, SI 2002/193 (as amended) replaced by Justices of the Peace (Size and Chairmanship of

Bench) Rules 2005, SI 2005/553; and Justices of the Peace (Training and Development Committee) Rules 2007, SI 2007/1609: see PARA 516.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(2) PETTY SESSIONS/(ii) Size and Chairmanship of Bench/A. CONSTITUTION OF MAGISTRATES' COURTS/599. Election meeting.

### **599. Election meeting.**

The justices<sup>1</sup> for each petty sessions area<sup>2</sup> must hold an election meeting<sup>3</sup> in October every year<sup>4</sup>. At the election meeting:

- 55 (1) the justices' chief executive<sup>5</sup> must announce the result of any election conducted by postal ballot for the office of chairman or deputy chairman of the bench where the result has been determined before the meeting<sup>6</sup>;
- 56 (2) where the determination of the result of an election to the office of deputy chairman has been deferred until the election meeting because a chairman has not been elected<sup>7</sup>, the justices' chief executive (assisted if need be by staff of the magistrates' courts committee whose area consists of or includes the petty sessions area) must determine the result of the postal ballot for the election to the office of deputy chairman and announce the name of the justice or justices who has or have been elected to that office<sup>8</sup>;
- 57 (3) the justices' chief executive must announce the number of first choice votes each justice received at each stage of the count of the votes cast in the postal ballot<sup>9</sup>; and
- 58 (4) the justices must decide the number of deputy chairmen to be elected to take office in the year commencing on 1 January after the next election meeting<sup>10</sup>.

Where an election to the offices of chairman or deputy chairman falls to be held at an election meeting<sup>11</sup>, the justices' chief executive must compile a list of justices as follows<sup>12</sup>:

- 59 (a) where after the postal ballot there remain offices of deputy chairman to be filled<sup>13</sup>, the list must comprise the names of the justices who were nominated for the office of deputy chairman excluding the name of any justices who have been elected chairman or deputy chairman<sup>14</sup>;
- 60 (b) where there are no nominations for the office of chairman<sup>15</sup>, the list must comprise the names of all the justices for the petty sessions area on the date of the election meeting<sup>16</sup>;
- 61 (c) where there are insufficient nominations for the offices of deputy chairman to be filled<sup>17</sup>, the list must comprise the names of all the justices for the petty sessions area on the date of the election meeting excluding the name of any justice or justices who have been elected chairman or deputy chairman<sup>18</sup>.

The justices' chief executive must prepare ballot papers containing the list of justices in alphabetical order, and hand to each justice present at the election meeting and eligible to vote in a postal ballot one ballot paper for each election which is to be held<sup>19</sup>. Each justice who votes must place a mark on the appropriate ballot paper against the name of the justice he wishes to be chairman and the name of the justice or justices he wishes to be deputy chairman or deputy chairmen (as the case may be)<sup>20</sup>. Immediately after the ballot has been closed, the justices' chief executive, assisted if need be by staff of the magistrates' courts committee

whose area consists of or includes the petty sessions area, must collect the ballot papers and count the votes<sup>21</sup>.

The justice who has received more than half the votes cast is elected chairman<sup>22</sup>. Where no justice receives such a majority after the first ballot, up to two further ballots may be held<sup>23</sup>. If, following two further ballots, no justice has obtained such a majority, the justice who has received the most votes in aggregate in the three ballots is elected chairman<sup>24</sup>. If, after three ballots, two or more justices have received the same number of votes in the aggregate so that the addition of a vote to those cast would entitle one of them to be elected, the justices' chief executive must immediately decide between them by lot and proceed as if the justice on whom the lot falls had received an additional vote<sup>25</sup>.

The result of the ballot for the election to the office of deputy chairman is ascertained by counting the votes given to each justice. The justice or justices (if there is to be more than one deputy chairman) who has or have received the most votes is elected to the office of deputy chairman<sup>26</sup>. If two or more justices obtain an equal number of votes and the addition of a vote to those cast for any one or more of those justices would entitle him or them to be elected, the justices' chief executive must immediately decide between those justices by lot and proceed as if any justice on whom the lot falls had received an additional vote<sup>27</sup>.

1 For the meaning of 'justice' see PARA 595 note 10 ante.

2 As to petty sessions areas see PARAS 591-592 ante.

3 'Election meeting' means the meeting held in accordance with the Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, r 10 (see the text to note 23 infra): r 2(a).

4 Ibid r 10(1).

5 As to the justices' chief executive see PARA 596 note 9 ante; and as to the justices' chief executive generally see PARA 624 post.

6 Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, r 10(2)(a).

7 Ie where ibid r 6(9) applies (see PARA 598 ante).

8 Ibid r 10(2)(b).

9 Ibid r 10(2)(c).

10 Ibid r 10(2)(d).

11 Ie where ibid r 8(7) or 9 applies. These positions obtain respectively where the determination of the result of a postal ballot for the offices of deputy chairmen leaves some offices still to be filled (see PARA 598 ante), or where there were insufficient nominations for the offices to be filled (see PARA 596 text and note 22 ante).

12 Ibid rr 8(7), 9, Schedule para 1.

13 Ie under ibid r 8(7).

14 Ibid Schedule para 2. If the number of justices whose names are on this list equals or is less than the number of offices available, the justices whose names are on the list are elected without a ballot: Schedule para 3.

15 Ie under ibid r 9(a).

16 Ibid Schedule para 4.

17 Ie under ibid r 9(b) or 9(c).

18 Ibid Schedule para 5.

19 Ibid Schedule para 6.

20 Ibid Schedule para 7.

21 Ibid Schedule para 8.

22 Ibid Schedule para 9.

23 Ibid Schedule para 10. Where a ballot (other than the third ballot) has been inconclusive the justices' chief executive must announce the fact and state the names of the justices for whom votes have been cast and the number of votes each justice received: Schedule para 13. Where a ballot has been conclusive the justices' chief executive must announce the result: Schedule para 14.

24 Ibid Schedule para 11.

25 Ibid Schedule para 12.

26 Ibid Schedule para 15.

27 Ibid Schedule para 16.

## **UPDATE**

### **595-602 Constitution of Magistrates' Courts**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, SI 2002/193 (as amended) replaced by Justices of the Peace (Size and Chairmanship of Bench) Rules 2005, SI 2005/553; and Justices of the Peace (Training and Development Committee) Rules 2007, SI 2007/1609: see PARA 516.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(2) PETTY SESSIONS/(ii) Size and Chairmanship of Bench/A. CONSTITUTION OF MAGISTRATES' COURTS/600. Term of office, re-election and vacancy in office.

#### **600. Term of office, re-election and vacancy in office.**

An elected chairman or deputy chairman<sup>1</sup> holds office for one year from 1 January after his election and is eligible for re-election<sup>2</sup>. However, a previous chairman<sup>3</sup> is not eligible for re-election as chairman if, on 1 January after the election, he will have held such office for periods totalling more than two years unless at least six years have elapsed since he last held office<sup>4</sup>. In any event a previous chairman is not eligible for re-election as chairman if, on 1 January after the election, he will have held such office for periods totalling more than five years<sup>5</sup>. A justice who has held office as deputy chairman of the justices for the petty sessions area in respect of which the election is held is not eligible for re-election as deputy chairman if on 1 January after the election he will have held such office for periods totalling more than five years<sup>6</sup>. Any period served as chairman or deputy chairman, as the case may be, before 31 December 2001 does not count towards the maximum periods of service permitted by the provisions described above<sup>7</sup>.

If the office of chairman or deputy chairman becomes or is about to become vacant for any reason, the justices' chief executive<sup>8</sup> must give written notice sent by first class post as soon as practicable to each justice eligible to vote in a postal ballot<sup>9</sup> that he may submit nominations in writing to the justices' chief executive for another chairman or deputy chairman (as the case may be)<sup>10</sup>.

1 le a chairman or deputy chairman elected under the Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193. As to chairmanship of the bench see PARAS 601-602 post.

2 Ibid r 12(1). As to the procedure for election see PARAS 596-599 ante.

3 'Previous chairman' means a justice who has held office as chairman of the justices for the petty sessions area in respect of which the election is held: *ibid* r 12(2).

4 Ibid r 12(3).

5 Ibid r 12(4).

6 Ibid r 12(5).

7 Ibid r 12(6).

8 As to the justices' chief executive see PARA 596 note 9 ante; and as to the justices' chief executive generally see PARA 624 post.

9 As to postal ballots see PARAS 597-598 ante.

10 Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, r 13(1). As to nominations to fill vacancies in office see r 13(2)-(4). The ballot is a postal ballot: see r 13(5). If no nominations are received, a special meeting must be convened: see r 13(6)-(8). A justice elected to fill a vacancy holds office for the remainder of the term of the justice whom he replaces, but that service does not count towards the maximum permitted service mentioned in r 12 (see the text to notes 4-7 *supra*): r 13(9), (10).

Comparable provision in relation to casual vacancies, which has effect in relation to existing office-holders until 31 December 2002, see the Justices of the Peace (Size and Chairmanship of Bench) Rules 1995, SI 1995/971, r 12; Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, r 21(3).

## UPDATE

### 595-602 Constitution of Magistrates' Courts

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, SI 2002/193 (as amended) replaced by Justices of the Peace (Size and Chairmanship of Bench) Rules 2005, SI 2005/553; and Justices of the Peace (Training and Development Committee) Rules 2007, SI 2007/1609: see PARA 516.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(2) PETTY SESSIONS/(ii) Size and Chairmanship of Bench/A. CONSTITUTION OF MAGISTRATES' COURTS/601. Bench Training and Development committee.

### 601. Bench Training and Development committee.

The justices<sup>1</sup> for each petty sessions area<sup>2</sup> must establish a Bench Training and Development committee, the membership of which must rotate by one third in each calendar year<sup>3</sup>. The membership of the committee consists of three, six or nine justices for the petty sessions area<sup>4</sup>, one justice being appointed chairman each year<sup>5</sup>. The membership is determined either by ballot at the election meeting, or by selection by a panel of justices chosen at the election meeting<sup>6</sup>.

A quorum of the committee is constituted by three members, or, in an emergency, two<sup>7</sup>. The justices for two or more petty sessions areas which share a justices' clerk<sup>8</sup> may establish a combined committee<sup>9</sup>.

A Bench Training and Development committee must compile annually a list of justices approved to preside in court<sup>10</sup> to sit in magistrates' courts<sup>11</sup> other than family proceedings courts<sup>12</sup>, youth courts<sup>13</sup> or licensing or betting licensing committees<sup>14</sup>. In establishing the list the committee must consider the number of approved court chairmen necessary to: (1) enable each court to sit under the chairmanship of an approved court chairman<sup>15</sup>; and (2) ensure that each court chairman has the opportunity to sit as chairman sufficiently often to maintain an appropriate level of competence<sup>16</sup>. The committee must regularly review the list of approved court chairmen, and may at any time remove a justice's name from, or add a justice's name to, that list<sup>17</sup>.

1 For the meaning of 'justice' see PARA 595 note 10 ante.

2 As to petty sessions areas see PARAS 591-592 ante.

3 Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, r 14(1). For the membership of the committee appointed in 2002 see r 14(5).

The Justices of the Peace (Size and Chairmanship of Bench) Rules 1995, SI 1995/971, rr 13-17, made provision as to the constitution and functions of chairmanship committees, and the appointment of presiding justices. Members of those committees retire on 31 December 2002, and subject to transitional provisions and savings, such committees are replaced by Bench Training and Development committees, which begin to function in January 2003, following election meetings in October 2002. See the Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, r 21.

4 Ibid r 14(2). The number of members of the committee is fixed by the election meeting in 2002: r 14(3). However, that number may be varied at subsequent election meetings: r 14(4), (7). As to the filling of casual vacancies see r 14(14)-(18).

5 Ibid r 14(13).

6 See ibid r 14(9). As to the terms of office of members of the committee see r 14(6)-(8), (10)-(12).

7 Ibid r 14(20).

8 The justices' chief executive and the justices' clerk may attend the meetings of the committee and act in an advisory capacity only: ibid r 14(21). 'Justices' clerk' in relation to a petty sessions area means a justices' clerk for that area and includes any person acting as such: r 2(a). As to justices' clerks see PARA 631 et seq post.

9 See ibid r 14(19).

10 These are known as 'approved court chairmen': ibid r 15(1). As to presiding justices see PARA 602 post.

11 For the meaning of 'magistrates' court' see PARA 583 ante.

12 As to the constitution of family proceedings courts see PARAS 603-607 post.

13 As to the constitution of youth courts see PARAS 608-611 post.

14 Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, r 15(1). As to the licensing functions of justices see PARA 535 ante. As to licensing and betting licensing committees see LICENSING AND GAMBLING vol 67 (2008) PARAS 40-42.

15 Ibid r 15(2)(a).

16 Ibid r 15(2)(b).

17 Ibid r 15(3).

## UPDATE

### 595-602 Constitution of Magistrates' Courts

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.



Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, SI 2002/193 (as amended) replaced by Justices of the Peace (Size and Chairmanship of Bench) Rules 2005, SI 2005/553; and Justices of the Peace (Training and Development Committee) Rules 2007, SI 2007/1609: see PARA 516.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(2) PETTY SESSIONS/(ii) Size and Chairmanship of Bench/A. CONSTITUTION OF MAGISTRATES' COURTS/602. Presiding justices.

## **602. Presiding justices.**

If the chairman or a deputy chairman<sup>1</sup> of the justices<sup>2</sup> for a petty sessions area<sup>3</sup> is present at a meeting of those justices, he must preside unless he requests another justice to preside<sup>4</sup>. However, a chairman or deputy chairman of the justices does not have the right to preside: (1) in a youth court<sup>5</sup> or family proceedings court<sup>6</sup>; (2) at meetings of a committee or other body of justices having its own chairman<sup>7</sup>; (3) at meetings when any District Judge (Magistrates' Courts)<sup>8</sup> is engaged as such in administering justice<sup>9</sup>; or (4) in court if<sup>10</sup> he is ineligible to preside in court<sup>11</sup>.

No justice may preside in court unless: (a) he has completed a course of instruction for chairmanship provided by a magistrates' court committee<sup>12</sup> in accordance with arrangements approved by the Lord Chancellor<sup>13</sup>; and either (b) he has been included by the Bench Training and Development committee in the list of approved court chairmen<sup>14</sup>; or (c) he is presiding under the supervision of an approved court chairman as part of his chairmanship training<sup>15</sup>. The justices present may appoint one of their number to preside in court to deal with any case in the absence of a justice so entitled to preside<sup>16</sup>, if: (i) before making such an appointment, the justices present are satisfied as to the suitability for this purpose of the justice proposed<sup>17</sup>; and (ii) the justice proposed has completed or is undergoing a course of instruction for chairmanship in accordance with arrangements approved by the Lord Chancellor<sup>18</sup>, unless by reason of illness, circumstances unforeseen when the justices to sit were chosen, or other emergency no such justice is present<sup>19</sup>.

1 As to the election of the chairman and deputy chairman see PARA 596 et seq ante.

2 For the meaning of 'justice' for the purposes of the Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193 (as amended) see PARA 595 note 10 ante.

3 As to petty sessions areas see PARAS 591-592 ante.

4 Justices of the Peace Act 1997 s 22(2); and see the Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, r 18(1). This does not permit a justice to preside in court unless he has completed or is undergoing a course of instruction for chairmanship approved by the Lord Chancellor under the Justices of the Peace Act 1997 s 64 (see PARAS 516 ante, 631 post): Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, r 18(2).

As to the transitional provisions applicable until 31 December 2002 in respect of the appointment of presiding judges and chairmanship committees, see PARA 601 note 3 ante.

5 As to the constitution of youth courts see PARAS 608-611 post.

6 Justices of the Peace Act 1997 s 22(4)(a). As to the constitution of family proceedings courts see PARAS 603-607 post.

7 Ibid s 22(4)(b).

8 As to the appointment and tenure of office of District Judges (Magistrates' Courts) see PARA 573 ante.

9 Justices of the Peace Act 1997 s 22(4)(c) (amended by the Access to Justice Act 1999 s 78(2), Sch 11 paras 43, 47).

10 le under rules made under the Justices of the Peace Act 1997 s 24 (as amended): see PARAS 595-596 ante.

11 Ibid s 22(3).

12 As to magistrates' courts committees see PARA 612 et seq post.

13 Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, r 16. As to arrangements approved by the Lord Chancellor under the Justices of the Peace Act 1997 s 64 see PARA 516 ante. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

14 Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, r 16(a). As to Bench Training and Development committees, and the appointment of approved court chairmen, see PARA 601 ante.

15 Ibid r 16(b).

16 Ibid r 17.

17 Ibid r 17(a).

18 le under the Justices of the Peace Act 1997 s 64: see PARAS 516 ante, 631 post.

19 Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, r 17(b).

## UPDATE

### 595-602 Constitution of Magistrates' Courts

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193, SI 2002/193 (as amended) replaced by Justices of the Peace (Size and Chairmanship of Bench) Rules 2005, SI 2005/553; and Justices of the Peace (Training and Development Committee) Rules 2007, SI 2007/1609: see PARA 516.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(2) PETTY SESSIONS/(ii) Size and Chairmanship of Bench/B. CONSTITUTION OF FAMILY PROCEEDINGS COURTS/603. Composition of family proceedings courts.

## ***B. CONSTITUTION OF FAMILY PROCEEDINGS COURTS***

### **603. Composition of family proceedings courts.**

When hearing family proceedings<sup>1</sup> a magistrates' court<sup>2</sup> must be composed of two or three lay justices<sup>3</sup> or a District Judge (Magistrates' Courts) as chairman and one or two lay justices<sup>4</sup> or, if it is not practicable for such a court to be composed, a District Judge (Magistrates' Courts) sitting alone<sup>5</sup>. Except where a District Judge (Magistrates' Courts) is sitting alone, the court must, so far as practicable<sup>6</sup>, include both a man and a woman<sup>7</sup>. The business of the magistrates' courts, so far as is consistent with the due dispatch of business, must be arranged in such manner as may be requisite for separating the hearing and determination of family proceedings from other business<sup>8</sup>.

Magistrates' courts constituted and sitting for the purpose of hearing family proceedings are known as family proceedings courts<sup>9</sup>. A justice is not qualified to sit as a member of a family

proceedings court unless he is a District Judge (Magistrates' Courts) nominated by the Lord Chancellor<sup>10</sup> to do so, or he is a member of a family panel<sup>11</sup>, that is a panel of lay justices<sup>12</sup>.

The justices to sit in each family proceedings court must be chosen from the family panel in such manner as the family panel may determine so as to ensure that the requirement as to composition<sup>13</sup> is complied with<sup>14</sup>. Where a District Judge (Magistrates' Courts)<sup>15</sup> is chosen to sit in a family proceedings court<sup>16</sup> he must preside, but where a District Judge (Magistrates' Courts) is not so chosen, the court must sit under the chairmanship of the chairman or a deputy chairman<sup>17</sup>. However, if, at any sitting of a family proceedings court, a District Judge (Magistrates' Courts), the chairman or a deputy chairman who was chosen to sit as a member of the court cannot do so owing to circumstances unforeseen when the justices to sit were chosen, the members of that court must choose one of their number to preside<sup>18</sup>.

Comparable provision is made for the constitution of family proceedings courts in London<sup>19</sup>.

1 For the meaning of 'family proceedings' see PARA 739 post.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 Magistrates' Courts Act 1980 s 66(1)(a) (s 66 substituted by the Access to Justice Act 1999 s 78(2), Sch 11 paras 26, 27). For the purposes of the Magistrates' Courts Act 1980 s 66 (as substituted), and s 67 (as amended) (see the text and notes 9-12 infra), 'lay justices' means justices of the peace who are not District Judges (Magistrates' Courts): s 66(3) (as so substituted). As to the appointment and tenure of office of District Judges (Magistrates' Courts) see PARA 573 ante.

4 Ibid s 66(1)(b) (as substituted: see note 3 supra).

5 Ibid s 66(1) (as substituted: see note 3 supra).

6 Where a woman magistrate failed to arrive at the court and no other woman magistrate was available, the Divisional Court upheld a decision of a court consisting of male magistrates only, but indicated that had the parties objected and asked for an adjournment so that arrangements could be made for the attendance of a woman magistrate, the case should have been adjourned: *Crowe v Crowe* (1962) 106 Sol Jo 432.

7 Magistrates' Courts Act 1980 s 66(2) (as substituted: see note 3 supra).

8 Ibid s 69(1) (amended by the Children Act 1989 s 92, Sch 11 para 8).

9 Magistrates' Courts Act 1980 s 67(1) (amended by the Children Act 1989 Sch 11 para 8).

10 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

11 Family panels were formerly known as domestic court panels: see the Children Act 1989 s 92(1); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 208. As to the membership of family panels see PARA 604 post; and as to combined family panels for two or more petty sessions areas see PARAS 606-607 post. The members of a family panel must meet as often as may be necessary but not less than twice a year to make arrangements connected with the sitting of family proceedings courts and to discuss questions connected with the work of those courts: Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405, r 10(1). The Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405 (as amended) were made under the Magistrates' Courts Act 1980 s 144 (as amended) (see PARA 588 ante), and do not apply in the inner London area or in the City of London: Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405, r 3.

Where, through a mistake by a justices' clerk, a magistrate who was not a member of a family panel sat as a member of a family proceedings court, having regard to the magistrate's training and the nature of the proceedings (appeal against cancellation of registration as a child-minder), it was held that the constitution of the bench was not sufficient to vitiate the proceedings. Despite the irregularity, the tribunal was 'established by law' within the meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 134 et seq): *Tameside Metropolitan Borough Council v Grant* [2002] 2 WLR 376.

12 Magistrates' Courts Act 1980 s 67(2) (amended by the Children Act 1989 Sch 11 para 8; and the Access to Justice Act 1999 s 78(2), Sch 11 paras 26, 28). Without prejudice to the generality of the power to make rules under the Magistrates' Courts Act 1980 s 144 (as amended) relating to the procedure and practice to be followed in magistrates' courts, provision may be made by such rules with respect to any of the following matters, that is to say: (1) the formation and revision of family panels and the eligibility of justices to be

members of such panels; (2) the appointment of persons as chairmen of family proceedings courts; and (3) the composition of family proceedings courts: s 67(3) (amended by the Children Act 1989 Sch 11 para 8). Any provision made by rules by virtue of the Magistrates' Courts Act 1980 s 67(3) (as amended) for the formation of family panels must include provision for the formation of at least one family panel for each commission area, but provision must not be made by the rules for the formation of more than one family panel for any petty sessions area: s 67(4) (amended by the Children Act 1989 Sch 11 para 8; and the Access to Justice Act 1999 s 108(3)(f)). Such rules may confer powers on the Lord Chancellor with respect to any of the matters specified in the rules and may, in particular, provide for the appointment of family panels by him and for the removal from a family panel of any justice who, in his opinion, is unsuitable to serve on a family proceedings court: Magistrates' Courts Act 1980 s 67(5) (amended by the Children Act 1989 Sch 11 para 8). Such rules may make different provision in relation to different areas for which family panels are formed: Magistrates' Courts Act 1980 s 67(6) (amended by the Children Act 1989 Sch 11 para 8). In the application of the Magistrates' Courts Act 1980 s 67 (as amended; prospectively further amended) to the counties of Greater Manchester, Merseyside and Lancashire for any reference in s 67(5) (as amended) to the Lord Chancellor there is substituted a reference to the Chancellor of the Duchy of Lancaster: s 67(6). Nothing in s 67 (as amended; prospectively further amended) may require the formation of a family panel for the City of London: s 67(8) (amended by the Children Act 1989; prospectively repealed by the Access to Justice Act 1999 s 106, Sch 15 Pt V).

13    le the Magistrates' Courts Act 1980 s 66(1) (as substituted): see the text to notes 1-5 supra.

14    Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405, r 10(2).

15    For these purposes a 'District Judge (Magistrates' Courts)' means a District Judge (Magistrates' Courts) appointed under the Justices of the Peace Act 1997 s 10A(1) (as added) (see PARA 573 ante) or a Deputy District Judge (Magistrates' Courts) appointed under s 10B(1) (as added) (see PARA 575 ante): Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405, r 2 (definition substituted by SI 2000/1873). As to the appointment and tenure of office of Deputy District Judges (Magistrates' Courts) see PARA 575 ante.

16    le under the Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405, r 10(2): see the text to notes 13-14 supra.

17    Ibid r 10(3) (amended by SI 2000/1873). As to the election of chairman and deputy chairmen of the family panel see the Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405, r 8 (as amended); and PARA 605 post.

18    Ibid r 10(4) (amended by SI 2000/1873).

19    See the Family Proceedings Court (Constitution) (Metropolitan Area) Rules 1991, SI 1991/1426 (amended by SI 2000/1873).

## UPDATE

### 603 Composition of family proceedings courts

NOTE 3--'Lay justice' now has the same meaning as in the Courts Act 2003 (see PARA 506): Magistrates' Courts Act 1980 66(3) (amended by the 2003 Act Sch 8 para 215).

TEXT AND NOTES 9-12--1980 Act s 67 substituted: 2003 Act s 49(1). For the purposes of the 1980 Act s 67, (1) a judge of the High Court or a deputy judge of the High Court is qualified to sit as a member of a family proceedings court to hear family proceedings of any description, and (2) a circuit judge, deputy circuit judge or recorder is qualified to sit as a member of a family proceedings court to hear family proceedings of any description if he has been nominated to do so by the President of the Family Division: 2003 Act s 66(4) (not yet in force).

1980 Act s 67 amended: Constitutional Reform Act 2005 Sch 4 para 101. See also Sch 4 para 375.

NOTE 11--SI 1991/1405 replaced: Family Proceedings Courts (Constitution of Committees and Right to Preside) Rules 2007, SI 2007/1610 (amended by SI 2007/2621).

NOTE 19--SI 1991/1426 now replaced by SI 2007/1610, NOTE 11.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(2) PETTY SESSIONS/(ii) Size and Chairmanship of Bench/B. CONSTITUTION OF FAMILY PROCEEDINGS COURTS/604. Appointments and formation of family panels.

#### **604. Appointments and formation of family panels.**

The justices for each petty sessions area<sup>1</sup> must appoint justices to form a family panel<sup>2</sup> for that area<sup>3</sup>. Justices appointed to the family panel must serve a term of three years<sup>4</sup>. The number of justices appointed to the panel for a petty sessions area is such as the justices for that area at the time of appointment think sufficient for family proceedings courts in the area<sup>5</sup>.

A justice must not be appointed to a family panel unless:

- 62 (1) he is a justice of the petty sessions area for which the family panel is being formed<sup>6</sup>;
- 63 (2) he has acted as a justice for a minimum period of one year<sup>7</sup>; and
- 64 (3) he has indicated that he is willing to serve as a member of the family panel<sup>8</sup>.

A justice is eligible for appointment to a family panel whether or not he has been a member of that family panel before, or is, or has been, a member of any other family panel<sup>9</sup>.

A District Judge (Magistrates' Courts)<sup>10</sup> who has been nominated by the Lord Chancellor<sup>11</sup> to hear family proceedings must be a member of any family panel for a petty sessions area or areas which is situated in the commission area or areas<sup>12</sup> to which he is appointed and every such nomination must be for a specified period and is revocable by the Lord Chancellor<sup>13</sup>.

The Lord Chancellor may remove from a family panel any justice who, in the Lord Chancellor's opinion, is unsuitable to serve on a family proceedings court<sup>14</sup>.

1 As to petty sessions areas see PARAS 591-592 ante.

2 As to the meaning of 'family panel' see PARA 603 note 11 ante.

3 See the Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405, r 4(2). The justices must appoint a family panel at a meeting held in the October of every third year following 1993: see r 4(2); the Justices of the Peace Act 1997 s 24 (as amended); the Justices of the Peace (Size and Chairmanship of Bench) Rules 2002, SI 2002/193 (as amended); and PARA 603 ante. Nominations are permitted but where voting is necessary it must be by secret ballot: Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405, r 4(4). As to the conduct of ballots see r 9 (amended by SI 2001/615).

4 See the Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405, r 4(2). The term commences on 1 January in the year following the appointment: see r 4(2).

5 Ibid r 4(3). The justices for a petty sessions area may at any time, subject to r 5(1) (see the text to notes 6-8 infra) appoint one or more additional members of the family panel to serve until the end of the period for which the other members of the family panel were appointed: r 4(5). If a vacancy occurs in the membership of a family panel for a petty sessions area, the justices for that area must, as soon as practicable, unless they consider that it is not necessary, and subject to r 5 (as amended), appoint a justice to fill the vacancy who must serve on the family panel until the end of the period for which the other members were appointed: r 6.

A justice may be temporarily transferred to the family panel of another petty sessions area within the justices' commission area for the purpose of hearing family proceedings if the better administration of justice would be served by such a transfer and the justice agrees to the transfer: see r 7 (substituted by SI 2001/615).

6 Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405, r 5(1)(a).

7 Ibid r 5(1)(b).

8 Ibid r 5(1)(c). As to the appointment of justices in October 1991 see rr 4(1), 5(1)(d).

9 Ibid r 5(2).

10 For the meaning of 'District Judge (Magistrates' Courts)' for the purposes of the Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405 (as amended) see PARA 603 note 15 ante. As to the appointment and tenure of office of District Judges (Magistrates' Courts) see PARA 573 ante.

11 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

12 As to commission areas see PARA 507 ante.

13 Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405, r 5(3).

14 Ibid r 5(4).

## UPDATE

### 604 Appointments and formation of family panels

TEXT AND NOTES--In respect of the next meeting to be held after 1 April 2005 as provided in SI 1991/1405 r 4(2) and in every third year thereafter, r 4(2) has effect as if the reference to 'each petty sessions area' were a reference to 'each local justice area' and a panel in being on that date has effect as the panel for the local justice area corresponding (in accordance with the first order made the Courts Act 2003 s 8) to the petty sessions area for which it was formed: SI 1991/1405 r 4(2A) (added by SI 2005/617).

TEXT AND NOTES 13, 14--SI 1991/1405 r 5(3) amended, r 5(3A) added, r 5(4) substituted: SI 2006/680.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(2) PETTY SESSIONS/(ii) Size and Chairmanship of Bench/B. CONSTITUTION OF FAMILY PROCEEDINGS COURTS/605. Election of chairman and deputy chairman of family panels.

### 605. Election of chairman and deputy chairman of family panels.

The members of each family panel<sup>1</sup> must<sup>2</sup>, on the occasion of their appointment<sup>3</sup> or as soon as practicable thereafter, meet and elect from amongst their number a chairman and as many deputy chairmen as will ensure<sup>4</sup> that each family proceedings court<sup>5</sup> sits under the chairmanship of a person so elected<sup>6</sup>. Nominations for chairman and one or more deputy chairmen may be made by the members of the family panel to the justices' chief executive<sup>7</sup> but, where voting is necessary, it must be by secret ballot<sup>8</sup>. If a vacancy occurs in the chairmanship or deputy chairmanship, the members of the family panel must, as soon as practicable, elect by secret ballot a chairman or, as the case may be, deputy chairman, to hold office for the remainder of the period for which the members serve<sup>9</sup>.

1 As to the meaning of 'family panel' see PARA 603 note 11 ante.

2 In accordance with the provisions of the Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405, rr 8, 9 (both as amended).

3 As to the appointment of justices to the family panel see PARA 604 ante.

4 le subject to the Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405, r 10(3) (as amended): see PARA 603 text and notes 15-17 ante.

5 As to the constitution of family proceedings courts see PARA 603 ante.

6 Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405, r 8(1).

7 As to the justices' chief executive see PARA 624 et seq post.

8 Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405, r 8(2) (amended by SI 2001/615). As to the conduct of ballots see the Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405, r 9 (amended by SI 2001/615).

9 Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405, r 8(3).

## UPDATE

### 605 Election of chairman and deputy chairman of family panels

TEXT AND NOTE 7--For 'justices' chief executive' read 'designated officer for the local justice area': SI 1991/1405 r 8(2) (amended by SI 2005/617).

Any reference in an enactment to the designated officer, in relation to a magistrates' court, justice of the peace or local justice area, is to a person who is appointed by the Lord Chancellor under the Courts Act 2003 s 2(1) (see COURTS vol 10 (Reissue) PARA 502A.2) or provided under a contract made by virtue of s 2(4), and designated by the Lord Chancellor in relation to that court, justice of the peace or area: s 37(1).

'Magistrates' court' includes a committee of justices, and when exercising a function exercisable by one or more justices of the peace, a justices' clerk, and an assistant clerk: s 37(2).

See further Constitutional Reform Act 2005 s 19, Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(2) PETTY SESSIONS/(ii) Size and Chairmanship of Bench/B. CONSTITUTION OF FAMILY PROCEEDINGS COURTS/606. Formation of a combined family panel.

### 606. Formation of a combined family panel.

A magistrates' courts committee<sup>1</sup> may make a direction for the formation or dissolution of a combined family panel<sup>2</sup> in respect of two or more petty sessions areas<sup>3</sup> in the same commission area<sup>4</sup>, of which at least one is a petty sessions area for which the committee acts<sup>5</sup>. Such a direction must not be made unless the magistrates' courts committee has consulted the justices for each petty sessions area specified in the direction for which it acts<sup>6</sup>.

If a magistrates' courts committee makes a direction which specifies a petty sessions area or petty sessions areas for which it does not act, the direction does not have effect unless, before the date on which it is to come into effect, a corresponding direction has been made by the magistrates' courts committee or committees for the area or areas in question<sup>7</sup>. A direction for the formation of a combined family panel must state:

- 65 (1) the number of justices who are to serve as members of the combined family panel, which must be such as the magistrates' courts committee thinks sufficient for family proceedings courts in the petty sessions areas specified in the direction<sup>8</sup>; and

- 66 (2) the number of members to be provided by each area, which must, as nearly as may be, be the proportion which the number of justices for that area bears to the total number of justices for the petty sessions areas specified in the direction<sup>9</sup>.

A direction for the formation or dissolution of a combined family panel<sup>10</sup> has effect:

- 67 (a) where it is a direction for the formation of a combined family panel and was made before 14 October 1991<sup>11</sup>, on that date<sup>12</sup>;
- 68 (b) where head (a) above does not apply and the direction is consequential upon the making of an order for the alteration of petty sessions areas<sup>13</sup>, on the date on which that order comes into force<sup>14</sup>; and
- 69 (c) in any other case, on 1 January in the year following the next October meeting of the justices for each of the areas concerned<sup>15</sup>.

On the coming into effect of a direction<sup>16</sup>, any existing family panel in respect of any of the petty sessions areas specified in the direction are dissolved and any appointments to the dissolved family panel cease<sup>17</sup>.

Where the Lord Chancellor<sup>18</sup> considers that a combined family panel should be formed for two or more petty sessions areas or that any combined family panel which has been so formed should be dissolved, he may direct the magistrates' courts committee for the area concerned to review the functioning of family proceedings courts in its area and submit a report to him on completion of the review<sup>19</sup>. Where the Lord Chancellor gives such a direction, then, after consideration of any report submitted to him or, if the committee fails to comply with the direction within six months, after the expiration of that period of six months he may, if he thinks fit, make an order for the formation or, as the case may be, the dissolution of a combined family panel for the petty sessions area concerned<sup>20</sup>. Where the Lord Chancellor proposes to make such an order he must send a copy of the proposed order to the magistrates' courts committee for any area the whole or part of which is concerned and to any family panel which is concerned<sup>21</sup>. Where a copy of the proposed order is required to be sent to any committee or family panel, before making an order, the Lord Chancellor must consider any representations made to him by the committee or family panel within one month from the time the copy of the proposed order was sent<sup>22</sup>.

1 As to magistrates' courts committees see PARA 612 et seq post.

2 As to the meaning of 'family panel' see PARA 603 note 11 ante.

3 As to petty sessions areas see PARAS 591-592 ante.

4 As to commission areas see PARA 507 ante.

5 Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405, r 11(2). A combined panel formed by a direction made under r 11(2) is the panel for the petty sessions areas specified in the direction and, in relation to any such combined panel, subject to r 12(4), the Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405 (as amended) have effect accordingly: r 11(11).

6 Ibid r 11(3). Notification of the direction must be made to the justices for each petty sessions area specified in the direction: r 11(4).

7 Ibid r 11(5).

8 Ibid r 11(6)(a). Further directions by the magistrates' courts committee may increase the number of justices who are to serve as members of the combined family panel: see r 11(9), (10).

9 Ibid r 11(6)(b).

10 Ie under ibid r 11(2): see the text to notes 1-5 supra.



- 11 As to the formation of a combined family panel before 14 October 1991 see *ibid* r 11(1).
- 12 *Ibid* r 11(7)(a).
- 13 *Ie* under the Justices of the Peace Act 1997 s 33 (as substituted) (see PARA 592 ante): see the Justices of the Peace Act 1997 s 73(1), Sch 4 para 1.
- 14 Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405, r 11(7)(b). For the purposes of r 11(7)(b), a direction is consequential upon the making of an order under the Justices of the Peace Act 1997 s 33 (as substituted) (see PARA 592 ante) if it is made after that order is made (but before it comes into force) and specifies a petty sessions area which is the subject of such an order: Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405, r 11(8); Justices of the Peace Act 1997 s 73(1), Sch 4 para 1.
- 15 Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405, r 11(7)(c). The October meeting is the meeting held in accordance with rules made under the Justices of the Peace Act 1997 s 24 (as amended) for the purpose of electing a chairman of the justices: see PARAS 596 et seq, 604 note 3 ante.
- 16 *Ie* made under Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405, r 11, other than a further direction under r 11(9) (see note 8 supra): r 11(12).
- 17 *Ibid* r 11(12).
- 18 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.
- 19 Magistrates' Courts Act 1980 s 68(1) (amended by the Children Act 1989 s 92, Sch 11 para 8; and the Transfer of Functions (Magistrates' Courts and Family Law) Order 1992, SI 1992/709, art 2(1)(c), (3), Sch 1).
- 20 Magistrates' Courts Act 1980 s 68(2) (amended by the Children Act 1989 Sch 11 para 8; and the Transfer of Functions (Magistrates' Courts and Family Law) Order 1992, SI 1992/709, Sch 1). An order of the Lord Chancellor under the Magistrates' Courts Act 1980 s 68(2) (as amended) must be made by statutory instrument and may be revoked or varied by a subsequent order (s 68(5) (amended by the Transfer of Functions (Magistrates' Courts and Family Law) Order 1992, SI 1992/709, Sch 1)), and may contain supplementary, incidental and consequential provisions (Magistrates' Courts Act 1980 s 68(6)).
- 21 *Ibid* s 68(3) (amended by the Children Act 1989 Sch 11 para 8; and the Transfer of Functions (Magistrates' Courts and Family Law) Order 1992, SI 1992/709, Sch 1).
- 22 Magistrates' Courts Act 1980 s 68(4) (amended by the Transfer of Functions (Magistrates' Courts and Family Law) Order 1992, SI 1992/709, Sch 1).

## UPDATE

### 606 Formation of a combined family panel

TEXT AND NOTES--References to a magistrates' courts committee are now to the Lord Chancellor and references to petty sessions areas are now to local justice areas: SI 1991/1405 r 11(2)-(4), (6), (11), (12) (all amended by SI 2005/617).

TEXT AND NOTES 1-5--Replaced. The Lord Chancellor may make a direction for the formation or dissolution of a combined panel in respect of two or more local justice areas: SI 1991/1405 r 11(2) (r 11(2) substituted, r 11(2A) added by SI 2005/617). A combined panel in being on 1 April 2005 has effect as the combined panel for the local justice areas corresponding to the petty sessions areas for which it was formed: SI 1991/1405 r 11(2A) (as added).

TEXT AND NOTE 7--SI 1991/1405 r 11(5) revoked: SI 2005/617.

NOTE 8--SI 1991/1405 r 11(9), (10) amended: SI 2005/617.

TEXT AND NOTES 10-15--SI 1991/1405 r 11(7) substituted: SI 2005/617. Now, a direction for the formation or dissolution of a combined family panel under SI 1991/1405 r 11(2) has effect on 1 January in the year following the next October meeting of the justices for each of the areas concerned held in accordance with rules made under the Courts

Act 2003 s 17 for the purpose of electing a chairman of the justices: SI 1991/1405 r 11(7) (as substituted).

NOTE 14--SI 1991/1405 r 11(8) revoked: SI 2005/617.

TEXT AND NOTES 18-22--Repealed: Courts Act 2003 Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(2) PETTY SESSIONS/(ii) Size and Chairmanship of Bench/B. CONSTITUTION OF FAMILY PROCEEDINGS COURTS/607. Appointment of justices to a combined family panel.

### **607. Appointment of justices to a combined family panel.**

Where a magistrates' courts committee<sup>1</sup> has made a direction for the formation of a combined family panel<sup>2</sup>, the justices for each petty sessions area<sup>3</sup> specified in the direction must, at a meeting of the justices<sup>4</sup>, appoint such number of justices from the petty sessions areas in question as is stated in the direction, to serve as members of the combined family panel, for a term commencing at the same time as the direction has effect and expiring at the same time as the term of appointment ends of any justices for the time being appointed<sup>5</sup> to form a family panel which is not specified in the direction<sup>6</sup>.

Where a magistrates' courts committee makes a direction for the dissolution of a combined family panel<sup>7</sup>, the justices for each petty sessions area specified in the direction must (unless the petty sessions area is also specified in a direction for the formation of a combined family panel), at a meeting of the justices<sup>8</sup>, appoint justices to form a family panel for that area for a term commencing at the same time as the direction has effect and expiring at the same time as the term of appointment ends of any justices for the time being appointed<sup>9</sup> to form a family panel which is not specified in the direction<sup>10</sup>.

1 As to magistrates' courts committees see PARA 612 et seq post.

2 Ie under the Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405, r 11(2): see PARA 606 ante.

3 As to petty sessions areas see PARAS 591-592 ante.

4 The meeting referred to in the text is: (1) where the direction is made before 14 October 1991, the meeting referred to in the Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405, r 4(1) (see PARA 604 note 8 ante) (r 12(2)(a)); (2) where head (1) supra does not apply and the direction is consequential upon the making of an order under the Justices of the Peace Act 1997 s 33 (see PARA 592 ante), within the meaning of the Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405, r 11(8) (see PARA 606 note 14 ante), a meeting held as soon as practicable after the direction has been made (r 12(2)(b)); and (3) in any other case, the meeting referred to in r 11(7)(c) (see PARA 606 ante) (r 12(2)(c)).

5 Ie under ibid r 4(1) or, where that term has expired, r 4(2): see PARA 604 ante.

6 Ibid r 12(1). In relation to the appointment of justices under r 12(1), the provisions of rr 4(4), 5(1)(b)-(d), (2), (3) (as amended), and r 9 (see PARA 604 ante) apply as they apply in relation to appointments under r 4: r 12(3). Subject to r 13 (see the text and notes 7-10 infra), after the first appointments to a combined panel have been made in accordance with r 12(1), the Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405 (as amended), have effect in relation to the combined panel with modifications: see r 12(4).

7 Ie under ibid r 11(2): see PARA 606 ante.

8 The meeting referred to in the text is: (1) where the direction is consequential upon the making of an order under the Justices of the Peace Act 1997 s 33 (see PARA 592 ante), within the meaning of the Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405, r 11(8) (see PARA 606 note 14 ante), a meeting held as soon as practicable after the direction has been made (r 13(2)(a)); and (2) in any other case, the meeting of the justices referred to in r 11(7)(c) (see PARA 606 ante) (r 13(2)(b)).

9     le under *ibid* r 4(1) or, where that term has expired, r 4(2): see PARA 604 ante.

10     *Ibid* r 13(1). In relation to the appointment of justices under r 13(1), the provisions of rr 4(3), (4), (5), 5(1), (2), (3) (as amended), and r 9 (as amended) (see PARA 604 ante) apply as they apply in relation to appointments under r 4: r 13(3).

## UPDATE

### 607 Appointment of justices to a combined family panel

TEXT AND NOTES--References to a magistrates' court committee are now to the Lord Chancellor; and references to petty sessions area(s) are now to local justice area(s): SI 1991/1405 rr 12, 13 (amended by SI 2005/617).

NOTES 4, 8--The meeting referred to in the TEXT is now the meeting referred to in SI 1991/1405 r 11(7) (see PARA 606): rr 12(2), 13(2) (both substituted by SI 2005/617).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(2) PETTY SESSIONS/(ii) Size and Chairmanship of Bench/C. CONSTITUTION OF YOUTH COURTS/608. Meaning of 'youth court'.

## C. CONSTITUTION OF YOUTH COURTS

### 608. Meaning of 'youth court'.

Courts of summary jurisdiction constituted in accordance with the relevant statutory provisions<sup>1</sup> and sitting for the purpose of hearing any charge against a child or young person<sup>2</sup> or for the purpose of exercising any other jurisdiction conferred on youth courts by or under any Act, are known as 'youth courts' and in whatever place sitting are deemed to be petty sessional courts<sup>3</sup>. Youth courts were formerly known as 'juvenile courts'<sup>4</sup>.

1     le the Children and Young Persons Act 1933 s 45, Sch 2 (as amended): see PARAS 610-611 post.

2     For these purposes 'child' means a person under the age of 14 years (*ibid* s 107(1)); and 'young person' means a person who has attained the age of 14 years and is under the age of 18 years (s 107(1); definition substituted by the Criminal Justice Act 1991 s 68, Sch 8 para 1(3)). As to a person's age see PARA 738 post.

3     Children and Young Persons Act 1933 s 45(1) (amended by the Criminal Justice Act 1991 s 100, Sch 11 para 40; and renumbered by the Access to Justice Act 1999 s 90(1), Sch 13 paras 8, 10). As to petty sessions see PARA 591 et seq ante.

The justices' chief executive appointed by a magistrates' courts committee is the justices' chief executive for every youth court for its area: Children and Young Persons Act 1933 s 45(2) (added by the Access to Justice Act 1999 Sch 13 paras 8, 10). As to the justices' chief executive see PARA 624 et seq post. As to magistrates' courts committees see PARA 612 et seq post. As to the jurisdiction of youth courts see PARA 746 et seq post.

4     See the Criminal Justice Act 1991 s 70(1). The consequential amendment of enactments is also provided for: see ss 70(2), 100, Sch 11 paras 40, 41.

## UPDATE

### 608 Meaning of 'youth court'

TEXT AND NOTES--Children and Young Persons Act 1933 s 45 substituted by the Courts Act 2003 s 50(1); and amended by the Constitutional Reform Act 2005 Sch 4 para 20. 1933 Act Sch 2 repealed: 2003 Act s 50(2), Sch 10.

TEXT AND NOTE 3--For the purposes of the 1933 Act s 45, every holder of a judicial office specified in the 2003 Act s 66(2) (see PARA 582A) is qualified to sit as a member of a youth court: s 66(3).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(2) PETTY SESSIONS/(ii) Size and Chairmanship of Bench/C. CONSTITUTION OF YOUTH COURTS/609. Power to make rules relating to youth courts.

### 609. Power to make rules relating to youth courts.

In addition to the general power to make rules relating to the procedure and practice to be followed by magistrates' courts<sup>1</sup>, there is a power to make rules<sup>2</sup> which may make provision<sup>3</sup> as to: (1) the formation and revision of youth court panels, that is to say, panels of justices specially qualified to deal with juvenile cases and the eligibility of justices to be members of such panels<sup>4</sup>; (2) the appointment of persons as chairmen of youth courts<sup>5</sup>; and (3) the composition of youth courts<sup>6</sup>. These rules<sup>7</sup> may confer powers on the Lord Chancellor<sup>8</sup> with respect to any of the matters specified in the rules and may, in particular, provide for the appointment of youth court panels by him and for the removal from a youth court panel of any justice who, in his opinion, is unsuitable to serve on a youth court<sup>9</sup>. The rules<sup>10</sup> may make different provision in relation to different areas for which youth court panels are formed<sup>11</sup>.

Nothing in the provisions described above or in rules made under the general power mentioned above<sup>12</sup> affects: (a) the areas for which youth court panels are formed and youth courts are constituted<sup>13</sup>; (b) the provisions with respect to the making of recommendations and orders relating to the formation of combined youth court panels<sup>14</sup>; or (c) the provisions relating to the divisions of the metropolitan area for which youth courts sit<sup>15</sup>.

1    Ie under the Magistrates' Courts Act 1980 s 144 (as amended): see PARA 588 ante.

2    Ie under *ibid* s 146 (as amended; prospectively further amended). Section 146 (as amended; prospectively further amended) is without prejudice to the generality of the power to make rules under s 144 (as amended) (see PARA 588 ante) relating to the procedure and practice to be followed by magistrates' courts: s 146(1). As to the formation and revision of youth court panels see PARA 610 post.

3    At the date at which this volume states the law no rules had been made under *ibid* s 146 (as amended; prospectively further amended). However, by virtue of the Children and Young Persons Act 1969 (Commencement No 3) Order 1970, SI 1970/1498, art 4, Sch 3 para 7, and the Interpretation Act 1978 s 17(2) (b), the Youth Courts (Constitution) Rules 1954, SI 1954/1711 (as amended) have effect as if made under the Magistrates' Courts Act 1980 ss 144, 145, 146 (all as amended; s 146 prospectively further amended).

4    *Ibid* s 146(1)(a) (s 146(1)-(4) amended by the Criminal Justice Act 1991 ss 70, 100, Sch 11 paras 40(1), (2) (n), 41(1), (2)(e)).

5    Magistrates' Courts Act 1980 s 146(1)(b) (as amended: see note 4 supra). As to the appointment of persons as chairmen see PARAS 610-611 post.

6    *Ibid* s 146(1)(c) (as amended: see note 4 supra). As to the composition of youth courts see PARAS 610-611 post.

7    Ie under *ibid* s 146(1): see the text and notes 2-6 supra.

8    As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

9 Magistrates' Courts Act 1980 s 146(2) (as amended: see note 4 supra). In the application of s 146 (as amended; prospectively further amended) to the county palatine of Lancaster, for any reference in s 146(2) (as amended) to the Lord Chancellor there is substituted a reference to the Chancellor of the Duchy: s 146(3).

10 The rules made by virtue of *ibid* s 146 (as amended; prospectively further amended).

11 *Ibid* s 146(3) (as amended: see note 4 supra).

12 The nothing in *ibid* s 146 (as amended; prospectively further amended) or in any rules made under s 144 (as amended) (see PARA 588 ante).

13 *Ibid* s 146(4)(a) (as amended: see note 4 supra).

14 *Ibid* s 146(4)(b) (as amended: see note 4 supra). The text refers to provisions under the Children and Young Persons Act 1963 s 17(1), Sch 2 Pt I (and, as it has effect by virtue of s 17(1), the Children and Young Persons Act 1933 Sch 2 Pt I (as substituted and amended)): see PARA 610 post.

As from a day to be appointed the Magistrates' Courts Act 1980 s 146(4)(b) (as amended) is further amended so as to provide that nothing in s 146 (as amended; and prospectively further amended) or in any rules made under s 144 (as amended) (see PARA 588 ante) affects the provisions of the Children and Young Persons Act 1963 s 17(1), Sch 2 Pt I (and, as it has effect by virtue of s 17(1), the Children and Young Persons Act 1933 Sch 2 Pt I (as substituted and amended)): Magistrates' Courts Act 1980 s 146(4)(b) (as amended (see note 4 supra); and prospectively further amended by the Access to Justice Act 1999 s 106, Sch 15 Pt V). At the date at which this volume states the law no such day had been appointed.

15 Magistrates' Courts Act 1980 s 146(4)(c) (as amended: see note 4 supra). The text refers to provisions under the Children and Young Persons Act 1933 Sch 2 para 14 (as substituted and amended; prospectively repealed): see PARA 611 post.

As from a day to be appointed the Magistrates' Courts Act 1980 s 146(4)(c) (as amended) is repealed by the Access to Justice Act 1999 Sch 15 Pt V. At the date at which this volume states the law no such day had been appointed.

## UPDATE

### 609 Power to make rules relating to youth courts

TEXT AND NOTES--Repealed: Courts Act 2003 Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(2) PETTY SESSIONS/(ii) Size and Chairmanship of Bench/C. CONSTITUTION OF YOUTH COURTS/610. Constitution of youth courts.

### 610. Constitution of youth courts.

The provisions described below provide for the constitution of youth courts<sup>1</sup>. A youth court consists of either: (1) a District Judge (Magistrates' Court) sitting alone<sup>2</sup>; or (2) not more than three justices who must include a man and a woman<sup>3</sup>. A justice is not qualified to sit as a member of a youth court unless he is either a District Judge (Magistrates' Court)<sup>4</sup>, or a member of a youth court panel, that is to say, a panel of justices specially qualified to deal with juvenile cases<sup>5</sup>. The panel is appointed by the justices at their annual meeting in October in every third year, the first appointments having been made in October 1955, and the members serve for a period of three years from 1 January following their appointment<sup>6</sup>. The panel must be composed of a sufficient number of specially qualified justices<sup>7</sup> and the members of the panel must elect by secret ballot a chairman and as many deputy chairmen as will ensure that each youth court will, if comprising three justices, sit under the chairmanship of a person so elected<sup>8</sup>. The members of a panel must meet as often as may be necessary but not less often than twice a year to make arrangements connected with the holding of youth courts and to discuss questions connected with the work of those courts<sup>9</sup>.

A youth court panel must be formed for every petty sessions area<sup>10</sup>. However, a magistrates' courts committee<sup>11</sup> may make recommendations to the Lord Chancellor<sup>12</sup> for the formation of a combined youth court panel for two or more petty sessions areas, or for the dissolution of any such combined youth court panel, if the committee's area<sup>13</sup> comprises at least one of the petty sessions areas concerned<sup>14</sup>. It is the duty of the magistrates' courts committee for any area, if directed to do so by the Lord Chancellor, to review the functioning of youth courts in its area and on completion of the review to submit to the Lord Chancellor a report either making or not making recommendations<sup>15</sup> or a report giving reasons for making no such recommendations<sup>16</sup>. Where a magistrates' courts committee: (a) makes such recommendations to the Lord Chancellor, he may make an order giving effect to them subject to any modifications he thinks fit<sup>17</sup>; or (b) fails to comply within six months with a direction of the Lord Chancellor under head (a) above, or the Lord Chancellor is dissatisfied with the report submitted in pursuance of such a direction, he may make such order as he thinks fit for the purposes mentioned<sup>18</sup>. Where a combined youth court panel is formed for any petty sessions area any justice who is a member of the panel may exercise in relation to each of the areas any jurisdiction exercisable by him as a member of a youth court<sup>19</sup>. No order<sup>20</sup> may provide for the formation of a combined youth court panel for an area unless the area consists of, or is wholly included in, a single commission area<sup>21</sup>. An order<sup>22</sup> providing for the formation of a combined youth court panel for an area which comprises a borough having a separate magistrates' courts committee must not be made except with the consent of every magistrates' courts committee the whole or part of whose area is included in the area for which the combined panel is formed<sup>23</sup>.

1 The Children and Young Persons Act 1933 s 45 (amended by the Criminal Justice Act 1991 ss 70, 100, Sch 11 para 40; and the Access to Justice Act 1999 s 90(1), Sch 13, PARAS 8, 10); Children and Young Persons Act 1933 Sch 2 paras 1-12 (Sch 2 substituted by the Children and Young Persons Act 1963 ss 17(1), 64(3), Schs 2, 5) which are set out in the text and notes *infra* currently have effect as respects petty sessions areas falling wholly outside the areas consisting of the inner London boroughs and the City of London: Children and Young Persons Act 1933 Sch 2 para 1 (Sch 2 as so substituted; Sch 2 para 1 amended by the Access to Justice Act 1999 s 76(2), Sch 10 paras 14, 16(1), (2)). However, as from a day to be appointed by the Access to Justice Act 1999 s 108(1), these provisions will apply equally within London: see s 77(1), (2), (3), 106, Sch 15 Pt V. At the date at which this volume states the law no such day had been appointed. As to the present constitution of youth courts in London see PARA 611 *post*.

2 Children and Young Persons Act 1933 Sch 2 para 2A (Sch 2 as substituted (see note 1 *supra*); and Sch 2 para 2A added by the Access to Justice Act 1999 s 78(2), Sch 11 para 12(1), (4)); Youth Courts (Constitution) Rules 1954, SI 1954/1711, r 12(1)(a) (substituted by SI 1998/2167; and amended by SI 2000/1873). Nothing in the Youth Courts (Constitution) Rules 1954, SI 1954/1711, r 12(1) (as substituted and amended) is to be construed as requiring a youth court to include both a man and a woman in any case in which a single justice has by law jurisdiction to act: r 12(4) (amended by the Criminal Justice Act 1991 s 70). As to the powers of a single justice see PARAS 540-549 *ante*.

3 Youth Courts (Constitution) Rules 1954, SI 1954/1711, r 12(1)(b) (substituted by SI 1998/2167). The justices must be chosen to ensure that the Youth Courts (Constitution) Rules 1954, SI 1954/1711, r 12(1) (as substituted and amended) and r 13(1) (as substituted) are complied with: see r 11 (amended by the Criminal Justice Act 1991 s 70; and SI 2000/1873). If at any sitting of a youth court other than one constituted in accordance with head (1) in the text, no man or no woman is available owing to circumstances unforeseen when the justices to sit were chosen under the Youth Courts (Constitution) Rules 1954, SI 1954/1711, r 11 (as amended), or if the only man or woman present cannot properly sit as a member of the court, and in any such case the other members of the panel present think it inexpedient in the interests of justice for there to be an adjournment, the court may be constituted without a man or, as the case may be, without a woman: r 12(2) (substituted by SI 1998/2167). For the purposes of the Youth Courts (Constitution) Rules 1954, SI 1954/1711 (as amended), 'panel' means a panel formed in pursuance of r 1 (as amended) and, in relation to a petty sessions area forming part of a commission area, references to the justices for a petty sessions area are references to the justices who ordinarily act in and for that petty sessions area: r 14(1) (amended by SI 1996/577). As to petty sessions areas see PARAS 591-592 *ante*. As to commission areas see PARA 507 *ante*.

Merely to give a woman justice notice to attend without inquiring whether she could attend was not ensuring her attendance: *Re JS (An Infant)* [1959] 3 All ER 856, [1959] 1 WLR 1218. See *R v Birmingham Justices, ex p F* (1999) 164 JP 523, DC (discretion to sit otherwise than as a fully constituted court may only be exercised after submissions from the parties).

4 As to the appointment and tenure of office of District Judges (Magistrates' Courts) see PARA 573 *ante*.

5 Children and Young Persons Act 1933 Sch 2 para 2 (Sch 2 as substituted (see note 1 supra); and Sch 2 para 2 amended by the Criminal Justice Act 1991 Sch 11 para 40; and the Access to Justice Act 1999 s 78(2), Sch 11 para 12(1), (3)).

6 See the Youth Courts (Constitution) Rules 1954, SI 1954/1711, r 1(1) (amended by the Criminal Justice Act 1991 s 70), the Youth Courts (Constitution) Rules 1954, SI 1954/1711, r 4 (amended by SI 1979/952). These rules take effect under the Magistrates' Courts Act 1980 s 146 (as amended; prospectively further amended): see the Children and Young Persons Act 1969 (Commencement No 3) Order 1970, SI 1970/1498, art 4, Sch 3 para 7; and the Interpretation Act 1978 s 17(2)(b).

7 See the Youth Courts (Constitution) Rules 1954, SI 1954/1711, r 1(2) (amended by SI 1991/2099); the Youth Courts (Constitution) Rules 1954, SI 1954/1711, r 1(3) (amended by the Criminal Justice Act 1991 s 70); the Youth Courts (Constitution) Rules 1954, SI 1954/1711, r 1(4) (substituted by SI 1996/577); and the Youth Courts (Constitution) Rules 1954, SI 1954/1711, r 3. Provision is made for filling casual vacancies (see r 6) and appointing additional justices to the panel where there would otherwise be too few (see r 1(3) (as amended)). Justices so appointed serve until the existing appointments end (see r 7 (amended by SI 1991/2099)).

8 See the Youth Courts (Constitution) Rules 1954, SI 1954/1711, r 9 (amended by the Criminal Justice Act 1991 s 70; and SI 2000/1873); and the Youth Courts (Constitution) Rules 1954, SI 1954/1711, r 13(1) (substituted by SI 2000/1873). For exceptions to the Youth Courts (Constitution) Rules 1954, SI 1954/1711, r 13(1) (as substituted) see r 13(1A) (added by SI 1983/675; and amended by the Criminal Justice Act 1991 s 70; and SI 2000/1873); and the Youth Courts (Constitution) Rules 1954, SI 1954/1711, r 13(2) (amended by SI 2000/1873). See also the Youth Courts (Constitution) Rules 1954, SI 1954/1711, rr 1(5), 13(3) (both added by SI 1996/3068).

9 Youth Courts (Constitution) Rules 1954, SI 1954/1711, r 10 (amended by virtue of the Criminal Justice Act 1991 s 70).

10 Children and Young Persons Act 1933 Sch 2 para 3 (Sch 2 as substituted (see note 1 supra); and Sch 2 para 3 amended by the Criminal Justice Act 1991 Sch 11 para 40). The Children and Young Persons Act 1933 Sch 2 para 3 (as substituted and amended) is subject to Sch 2 paras 4-12 (all as substituted and amended): see the text and notes 11-23 infra.

11 As to magistrates' courts committees see PARA 612 et seq post.

12 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

13 As to magistrates' courts committee areas see PARA 612 et seq post.

14 Children and Young Persons Act 1933 Sch 2 para 4 (Sch 2 as substituted (see note 1 supra); and Sch 2 para 4 amended by the Criminal Justice Act 1991 Sch 11 para 40; and the Transfer of Functions (Magistrates' Courts and Family Law) Order 1992, SI 1992/709, art 2(1), (3), Sch 1). A magistrates' courts committee, before submitting recommendations for an order under the Children and Young Persons Act 1933 Sch 2 (as substituted and amended), must consult and, when submitting any such recommendations, must give notice to: (1) the justices acting for any petty sessions area concerned which is within the committee's area (except where the committee's area is a borough); and (2) any other magistrates' courts committee the whole or part of whose area is concerned, and must also consult the said justices before commencing on any recommendations on which they are consulted under Sch 2 para 10 (as substituted) by another magistrates' courts committee: Sch 2 para 10 (as substituted: see note 1 supra). As from a day to be appointed Sch 2 para 10 is amended to provide that a magistrates' courts committee, before submitting recommendations for an order under Sch 2 (as substituted and amended), must consult and, when submitting any such recommendations, must give notice to: (a) the justices acting for any petty sessions area concerned which is within the committee's area; and (b) any other magistrates' courts committee the whole or part of whose area is concerned, and must also consult the said justices before commencing on any recommendations on which they are consulted under Sch 2 para 10 by another magistrates' courts committee: Sch 2 para 10 (as so substituted; prospectively amended by the Access to Justice Act 1999 Sch 15 Pt V). At the date at which this volume states the law no such day had been appointed.

Where the Lord Chancellor proposes to make an order under the Children and Young Persons Act 1933 Sch 2 (as substituted and amended) in a case where either no recommendations have been made to him or the proposed order departs from the recommendations made to him, he must send a copy of the proposed order to the magistrates' courts committee for any area the whole or part of which is concerned and to the justices acting for any petty sessions area concerned: Sch 2 para 11 (Sch 2 as substituted (see note 1 supra); and Sch 2 para 11 amended by the Transfer of Functions (Magistrates' Courts and Family Law) Order 1992, SI 1992/709, Sch 1). Where notice of recommendations or a copy of a proposed order is required to be sent under the Children and Young Persons Act 1933 Sch 2 paras 1-11 (as substituted and amended) to any justices or committee, the Lord Chancellor must, before making an order, consider any representations made to him by the justices or committee, or by any youth court panel concerned, within one month from the time the notice

was given or the copy of the proposed order was sent: Sch 2 para 12 (Sch 2 as substituted (see note 1 supra); and Sch 2 para 12 amended by the Criminal Justice Act 1991 Sch 11 para 40; and the Transfer of Functions (Magistrates' Courts and Family Law) Order 1992, SI 1992/709, Sch 1).

15 le a report making such recommendations as are mentioned in the Children and Young Persons Act 1933 Sch 2 para 4 (as substituted and amended): see the text and note 14 supra.

16 Ibid Sch 2 para 5 (Sch 2 as substituted (see note 1 supra); and Sch 2 para 5 amended by the Criminal Justice Act 1991 Sch 11 para 40).

17 Children and Young Persons Act 1933 Sch 2 para 6(a) (Sch 2 as substituted (see note 1 supra); and Sch 2 para 6(a) amended by the Transfer of Functions (Magistrates' Courts and Family Law) Order 1992, SI 1992/709, Sch 1). An order of the Lord Chancellor under the Children and Young Persons Act 1933 Sch 2 (as substituted and amended) must be made by statutory instrument and may be revoked or varied by a subsequent order: Sch 2 para 20 (Sch 2 as substituted (see note 1 supra); and Sch 2 para 20 amended by the Transfer of Functions (Magistrates' Courts and Family Law) Order 1992, SI 1992/709, Sch 1). Any such order may contain supplementary, incidental and consequential provisions: Children and Young Persons Act 1933 Sch 2 para 21 (Sch 2 as substituted: see note 1 supra).

18 Ibid Sch 2 para 6(b) (Sch 2 as substituted (see note 1 supra); and Sch 2 para 6(b) amended by the Transfer of Functions (Magistrates' Courts and Family Law) Order 1992, SI 1992/709, Sch 1). The purposes referred to in the text are those mentioned in the Children and Young Persons Act 1933 Sch 2 para 4 (as substituted and amended): see Sch 2 para 6(b) (as so substituted and amended).

19 Ibid Sch 2 para 7 (Sch 2 as substituted (see note 1 supra); and Sch 2 para 7 amended by the Criminal Justice Act 1991 Sch 11 para 40).

20 le under the Children and Young Persons Act 1933 Sch 2 (as substituted and amended).

21 Ibid Sch 2 para 8 (Sch 2 as substituted (see note 1 supra); and Sch 2 para 8 amended by the Criminal Justice Act 1991 Sch 11 para 40; and the Access to Justice Act 1999 s 76(2), Sch 10 paras 14, 16(1), (3)). As from a day to be appointed the Children and Young Persons Act 1933 Sch 2 para 8 (as substituted and amended) is further amended to provide that no order under Sch 2 (as substituted and amended) may provide for the formation of a combined youth court panel for an area unless the area consists of, or is wholly included in, a single commission area, or includes the City of London: Sch 2 para 8 (as so substituted and amended; prospectively further amended by the Access to Justice Act 1999 s 77(1), (4)). At the date at which this volume states the law no such day had been appointed.

22 See note 20 supra.

23 Children and Young Persons Act 1933 Sch 2 para 9 (Sch 2 as substituted (see note 1 supra); and Sch 2 para 9 amended by the Criminal Justice Act 1991 Sch 11 para 40). As from a day to be appointed the Children and Young Persons Act 1933 Sch 2 para 9 (as substituted and amended) is substituted to provide that no order under Sch 2 (as substituted and amended) may provide for the formation of a combined youth panel for an area unless the area consists of, or is wholly included in, the area of a single magistrates' courts committee: Sch 2 para 9 (prospectively substituted by the Access to Justice Act 1999 s 77(1), (5)). At the date at which this volume states the law no such day had been appointed.

## UPDATE

### 610 Constitution of youth courts

TEXT AND NOTES--Children and Young Persons Act 1933 s 45 substituted: see PARA 608. 1933 Act Sch 2 repealed: Courts Act 2003 s 50(2), Sch 10.

As to the protected functions of the Lord Chancellor see the Constitutional Reform Act 2005 s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

NOTE 6--See also SI 1954/1711 r 1(1A) (added by SI 2005/617).

NOTE 7--SI 1954/1711 r 3 amended: SI 2005/617.

NOTE 8--SI 1954/1711 r 9 further amended: SI 2005/617. SI 1954/1711 r 1(5) amended, r 1(6) added: SI 2006/680.



Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(2) PETTY SESSIONS/(ii) Size and Chairmanship of Bench/C. CONSTITUTION OF YOUTH COURTS/611. Constitution of youth courts in London.

### **611. Constitution of youth courts in London.**

Youth courts are constituted for the metropolitan area, that is to say the petty sessions area<sup>1</sup> falling within the inner London area and the City of London<sup>2</sup>, and sit in such divisions and in such places as the Lord Chancellor<sup>3</sup> may by order specify, without prejudice, however, to their jurisdiction with respect to the whole area<sup>4</sup>. A youth court in the metropolitan area consists of either a District Judge (Magistrates' Courts)<sup>5</sup> sitting alone or a chairman and two other members, and must have both a man and a woman among its members<sup>6</sup>. The chairman, where applicable, is a person nominated by the Lord Chancellor to act as chairman of youth courts for the metropolitan area and must be either a District Judge (Magistrates' Courts), or a lay justice for the inner London area, selected, in such manner as may be provided by an order of the Lord Chancellor<sup>7</sup>, from a panel of lay justices from time to time nominated by him<sup>8</sup>. The other members, where applicable, are to be justices so selected from that panel<sup>9</sup>.

1 As to petty sessions areas see PARAS 591-592 ante.

2 See the Children and Young Persons Act 1933 s 45 (amended by the Criminal Justice Act 1991 ss 70, 100, Sch 11 para 40; and the Access to Justice Act 1999 s 90(1), Sch 13, PARAS 8, 10); Children and Young Persons Act 1933 Sch 2 para 13 (Sch 2 substituted by the Children and Young Persons Act 1963 ss 17(1), 64(3), Schs 2, 5; and the Children and Young Persons Act 1933 Sch 2 para 13 amended by the Access to Justice Act 1999 s 76(2), Sch 10 paras 14, 16(1), (4)). These provisions presently apply in London, but as from a day to be appointed the Children and Young Persons Act 1933 Sch 2 paras 13-18 is repealed by the Access to Justice Act 1999 ss 77(6), 106, Sch 15 Pt V, and thereafter the provisions set out in PARA 610 ante will apply to all youth courts in England and Wales. At the date at which this volume states the law no such day had been appointed.

3 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

4 See the Children and Young Persons Act 1933 Sch 2 para 14 (Sch 2 as substituted (see note 2 supra); and Sch 2 para 14 amended by the Criminal Justice Act 1991 s 100, Sch 11 para 40; and the Transfer of Functions (Magistrates and Family Law) Order 1992, SI 1992/709, art 2(1)(c), (3), Sch 1). As to the prospective repeal of the Children and Young Persons Act 1933 Sch 2 paras 13-18 (as substituted and amended) see note 2 supra.

5 As to the appointment and tenure of office of Deputy District Judges (Magistrates' Courts) see PARA 575 ante.

6 See the Children and Young Persons Act 1933 Sch 2 para 15(a) (Sch 2 as substituted (see note 2 supra); and Sch 2 para 15(a) amended by the Criminal Justice Act 1991 s 100, Sch 11, PARA 40; the Crime and Disorder Act 1998 ss 48(1)(a), 120(2), Sch 10; and the Access to Justice Act 1999 (Commencement No 4 and Transitional Provisions) Order 2000, SI 2000/1920, art 4(b)). As to the prospective repeal of the Children and Young Persons Act 1933 Sch 2 paras 13-18 (as substituted and amended) see note 2 supra.

Rules under the Magistrates' Courts Act 1980 s 144 (as amended) (see PARA 588 ante) may repeal, either generally or with respect to any part of the metropolitan area, any provision contained in the Children and Young Persons Act 1933 Sch 2 paras 15-18 (as substituted and amended; prospectively repealed) (see the text and notes infra) (which contain provisions applicable in the metropolitan area with respect to certain of the matters referred to in the Magistrates' Courts Act 1980 s 146(1) (as amended) (see PARA 609 ante): s 146(4) (amended by the Criminal Justice Act 1991 ss 70, 100, Sch 11 paras 40(1), (2)(n), 41(1), (2)(e)). As from a day to be appointed this provision is repealed by the Access to Justice Act 1999 s 106, Sch 15 Pt V. At the date at which this volume states the law no such day had been appointed. For this purpose 'the metropolitan area' means the area consisting of the inner London boroughs and the City of London: Magistrates' Courts Act 1980 s 146(5) (amended by the Access to Justice Act 1999 s 76, Sch 10 paras 33, 35). As from a day to be appointed the Magistrates' Courts Act 1980 s 146(5) (as amended) is repealed by the Access to Justice Act 1999 Sch 15 Pt V. At the date at which this volume states the law no such day had been appointed.

7 The Inner London Youth Courts (Selection of Chairmen) Order 1990, SI 1990/1265 (amended by the Criminal Justice Act 1991 s 70; and SI 2000/1874) establishes a selection committee which recommends

potential chairmen to the Lord Chancellor. In order to be considered for recommendation, the justices must satisfy four criteria: (1) they must have undergone the chairmanship course provided by the Inner London Magistrates' Court Service; (2) they must have served for at least six years as a justice of the peace, including at least five years in a youth court (not necessarily in inner London); (3) they must thereafter have successfully completed a special course; and (4) they must thereafter have sat as a chairman under training on at least six occasions and for a total of not less than 20 hours, on each occasion with and at the request of a court chairman (who should not always be the same one) approved for this purpose by the present or past chairman of the panel: Inner London Youth Courts (Selection of Chairmen) Order 1990, SI 1990/1265, art 3 (amended by the Criminal Justice Act 1991 s 70).

8 See the Children and Young Persons Act 1933 Sch 2 para 15(b) (Sch 2 as substituted (see note 2 supra); and Sch 2 para 15(b) amended by the Administration of Justice Act 1964 s 12(2), (3); and the Crime and Disorder Act 1998 s 48(1)(b)). Where, in the case of any sitting of a youth court, a person nominated under the Children and Young Persons Act 1933 Sch 2 para 15(b) (as substituted and amended) is available to act as chairman but considers that it would be appropriate for another member of the court to act as chairman, he may nominate that other member so to act at that sitting: Sch 2 para 15A(1) (Sch 2 paras 13-18 as substituted (see note 1 supra); and Sch 2 para 15A added by the Administration of Justice Act 1985 s 61; and amended by the Criminal Justice Act 1991 Sch 11 para 40). The Lord Chancellor, in nominating any persons under the Children and Young Persons Act 1933 Sch 2 Pt II (as substituted and amended), must have regard to the previous experience of the persons available and their special qualifications for dealing with juvenile cases, and every such nomination must be for a specified period and must be revocable by the Lord Chancellor: Sch 2 para 18 (Sch 2 as substituted (see note 2 supra); and Sch 2 para 18 amended by the Administration of Justice Act 1964 s 12). A member of a youth court nominated to act as chairman under the Children and Young Persons Act 1933 Sch 2 para 15A(1) (Sch 2 as substituted (see note 1 supra); and Sch 2 para 15A(1) as added and amended) may only so act while the person making the nomination continues to sit as a member of the court: Sch 2 para 15A(2) (para 15A as so added and amended). If at any time, by reason of illness or other emergency, no person nominated under Sch 2 para 15(b) (Sch 2 as substituted (see note 1 supra); and Sch 2 para 15(b) as amended) is available to act as chairman of a youth court, any District Judge (Magistrates' Courts) or, with the consent of the Lord Chancellor, any justice of the peace selected from the panel, may act temporarily as chairman: Sch 2 para 16 (Sch 2 as substituted (see note 2 supra); and Sch 2 para 16 amended by the Administration of Justice Act 1964 s 12(3); the Criminal Justice Act 1991 Sch 11 para 40; and the Access to Justice Act 1999 (Commencement No 4 and Transitional Provisions) Order 2000, SI 2000/1920, art 4(b)). Where it appears to the chairman that a youth court cannot, without adjournment, be fully constituted, and that an adjournment would not be in the interests of justice, the chairman may sit with one other member (whether a man or a woman): Children and Young Persons Act 1933 Sch 2 para 17 (Sch 2 as substituted (see note 2 supra); and Sch 2 para 17 amended by the Criminal Justice Act 1991 Sch 11 para 40; and the Crime and Disorder Act 1998 Sch 10). As to the prospective repeal of the Children and Young Persons Act 1933 Sch 2 Pt II (as substituted and amended) see note 2 supra.

Rules under the Magistrates' Courts Act 1980 s 144 (as amended) (see PARA 588 ante) may repeal, either generally or with respect to any part of the metropolitan area, any provision contained in the Children and Young Persons Act 1933 Sch 2 paras 15-18 (as substituted and amended; prospectively repealed) (which contain provisions applicable in the metropolitan area with respect to certain of the matters referred to in the Magistrates' Courts Act 1980 s 146(1) (as amended) (see PARA 609 ante): see s 146(4) (as amended; prospectively amended); and note 6 supra.

9 Ibid Sch 2 para 15(c) (Sch 2 as substituted (see note 2 supra); and Sch 2 para 15(c) amended by the Crime and Disorder Act 1998 s 48(1)(c)). As to the prospective repeal of the Children and Young Persons Act 1933 Sch 2 Pt II (as substituted and amended) see note 2 supra.

Rules under the Magistrates' Courts Act 1980 s 144 (as amended) (see PARA 588 ante) may repeal, either generally or with respect to any part of the metropolitan area, any provision contained in the Children and Young Persons Act 1933 Sch 2 paras 15-18 (as substituted and amended; prospectively repealed) (which contain provisions applicable in the metropolitan area with respect to certain of the matters referred to in the Magistrates' Courts Act 1980 s 146(1) (as amended) (see PARA 609 ante): see s 146(4) (as amended; prospectively amended); and note 6 supra.

## UPDATE

### 611 [Youth courts]

TEXT AND NOTES--Children and Young Persons Act 1933 s 45 substituted: see PARA 608.  
1933 Act Sch 2 repealed: Courts Act 2003 Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(i) Magistrates' Courts Committees/A. INTRODUCTION/612. Role of the magistrates' courts committees.

### **(3) ADMINISTRATION AND FINANCE**

#### **(i) Magistrates' Courts Committees**

##### **A. INTRODUCTION**

##### **612. Role of the magistrates' courts committees.**

The administrative responsibility for maintaining an efficient and effective service of magistrates' courts is in general vested in magistrates' courts committees<sup>1</sup>. England<sup>2</sup> and Wales<sup>3</sup> outside Greater London<sup>4</sup> is divided into areas for each of which there is a magistrates' courts committee<sup>5</sup>. The magistrates' courts committee for Greater London is the Greater London Magistrates' Courts Authority<sup>6</sup>.

Such committees have various administrative functions conferred or imposed on them by or under the Justices of the Peace Act 1997<sup>7</sup>, including functions in relation to commission areas<sup>8</sup>, petty sessions areas<sup>9</sup>, the appointment of staff<sup>10</sup> (including justices' chief executives<sup>11</sup> and justices' clerks<sup>12</sup>), and the provision of training courses for justices<sup>13</sup>, justices' clerks and staff of the committee<sup>14</sup>. They also have such functions as are conferred or imposed on them by or under any other enactment and such other functions relating to matters of an administrative character as they may be authorised by the Lord Chancellor to undertake<sup>15</sup>.

1 See the Justices of the Peace Act 1997 s 31(1); and PARA 617 post.

2 For the meaning of 'England' see PARA 501 note 7 ante.

3 For the meaning of 'Wales' see PARA 501 note 7 ante.

4 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

5 See the Justices of the Peace Act 1997 s 27A(1) (as added); and PARA 613 post.

6 See *ibid* s 30A (as added); and PARA 616 post.

7 See *ibid* s 27 (as substituted); and PARA 617 post.

8 See *ibid* s 32A (as added); and PARA 507 ante.

9 See *ibid* s 33 (as substituted); and PARA 592 ante.

10 A magistrates' courts committee may employ staff on such terms as it thinks fit: *ibid* s 44(2).

11 See *ibid* s 40 (as amended); and PARA 624 post.

12 See *ibid* s 42; and PARA 631 post.

13 See *ibid* s 64; and PARAS 516 ante, 631 post.

14 See *ibid* s 31(3); and PARA 617 post.

15 See *ibid* s 27 (as substituted); and PARA 617 post. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

#### **UPDATE**

## **612-623 Magistrates' Courts Committees**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. Part 1 (ss 1-6) brings the administration of the whole court system under the auspices of the Lord Chancellor, and consequentially magistrates' courts committees are abolished. See further COURTS vol 10 (Reissue) PARA 502A.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(i) Magistrates' Courts Committees/B. MAGISTRATES' COURTS COMMITTEES OUTSIDE GREATER LONDON/613. Committee areas.

### ***B. MAGISTRATES' COURTS COMMITTEES OUTSIDE GREATER LONDON***

#### **613. Committee areas.**

England<sup>1</sup> and Wales<sup>2</sup> outside Greater London<sup>3</sup> is divided into areas for each of which there is a magistrates' courts committee<sup>4</sup>, and the areas of the committees are as specified by the Lord Chancellor<sup>5</sup> by order made by statutory instrument<sup>6</sup>. Each area outside London for which there is a magistrates' courts committee must: (1) consist of the whole of one or more commission areas<sup>7</sup> or be included wholly within a single commission area<sup>8</sup>; and (2) comprise the whole of one or more petty sessions areas<sup>9</sup>.

1 For the meaning of 'England' see PARA 501 note 7 ante.

2 For the meaning of 'Wales' see PARA 501 note 7 ante.

3 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

4 Justices of the Peace Act 1997 s 27A(1) (ss 27A, 27B both added by the Access to Justice Act 1999 s 81).

5 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

6 Justices of the Peace Act 1997 s 27A(2) (as added: see note 4 supra). As to the order made under s 27A(2) (as added) see the Magistrates' Courts Committee Areas Order 1999, SI 1999/3008 (amended by SI 2000/676; SI 2001/695). As to the alteration of magistrates' courts committee areas see PARA 614 post.

The Lord Chancellor may give directions with respect to convening the first meeting of a magistrates' courts committee coming into existence by virtue of an order under the Justices of the Peace Act 1997 s 27A(2) (as added): s 27B(7) (as so added).

7 As to commission areas see PARA 507 ante.

8 Justices of the Peace Act 1997 s 27A(3)(a) (as added: see note 4 supra).

9 Ibid s 27A(3)(b) (as added: see note 4 supra). As to petty sessions areas see PARAS 591-592 ante.

#### **UPDATE**

## **612-623 Magistrates' Courts Committees**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. Part 1 (ss 1-6) brings the administration of the whole court system under the auspices of the Lord Chancellor, and consequentially magistrates' courts committees are abolished. See further COURTS vol 10 (Reissue) PARA 502A.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(i) Magistrates' Courts Committees/B. MAGISTRATES' COURTS COMMITTEES OUTSIDE GREATER LONDON/614. Alteration of committee area.

#### **614. Alteration of committee area.**

A magistrates' courts committee for an area outside Greater London<sup>1</sup> may at any time submit to the Lord Chancellor<sup>2</sup> written proposals for the alteration of its area<sup>3</sup>. However, it may do this only after consulting (1) the magistrates<sup>4</sup> for its area or any other magistrates' courts committee area to which the proposals relate<sup>5</sup>; (2) any other magistrates' courts committee to which the proposals relate<sup>6</sup>; and (3) every relevant authority<sup>7</sup> whose area includes all or any part of any of the magistrates' courts committee areas to which the proposals relate<sup>8</sup>. The Lord Chancellor must not make an order<sup>9</sup> which makes an alteration of any area unless he is satisfied that the making of the order is likely to contribute to an overall increase in the efficiency of the administration of magistrates' courts<sup>10</sup>.

Before making an order<sup>11</sup> which makes an alteration of any area, other than an order which implements<sup>12</sup> proposals submitted to him by the magistrates' courts committee<sup>13</sup>, the Lord Chancellor must consult: (a) the magistrates for the area<sup>14</sup>; (b) the magistrates' courts committees for the area<sup>15</sup>; and (c) every relevant authority whose area includes all or any part of the magistrates' courts committee area<sup>16</sup>.

1 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

2 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 Justices of the Peace Act 1997 s 27B(1) (s 27B added by the Access to Justice Act 1999 s 81). References to the alteration of a magistrates' courts committee area include (as well as a change in the boundaries of the area) the combination of the area with another magistrates' courts committee area and the division of the area between two or more magistrates' courts committee areas: Justices of the Peace Act 1997 s 27B(9) (as so added).

4 As to the meaning of 'magistrate' see PARA 501 ante.

5 Justices of the Peace Act 1997 s 27B(2)(a) (as added: see note 3 supra).

6 Ibid s 27B(2)(b) (as added: see note 3 supra).

7 For these purposes, 'relevant authority' means (1) a county council; (2) a county borough council; or (3) the council of a unitary district: *ibid* s 27B(10) (as added: see note 3 supra). For the meaning of 'unitary district' see PARA 564 note 9 ante. As to areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARAS 24 et seq, 37 et seq.

8 Ibid s 27B(2)(c) (as added: see note 3 supra).

9 *Ie* under *ibid* s 27A(2) (as added): see PARA 613 ante.

10 Ibid s 27B(3) (as added: see note 3 supra). For the meaning of 'magistrates' court' see PARA 583 ante.

An order under s 27A(2) (as added) (see PARA 613 ante) which makes an alteration of any area may contain such consequential and transitional provisions as appear to the Lord Chancellor to be necessary or expedient, including: (1) provision for the transfer of property, rights and liabilities; (2) provision for the management or custody of transferred property (whether real or personal); and (3) provision for any magistrates' courts committee coming into existence by virtue of the order to be constituted under s 30 (as substituted) (see PARA 615 post) as a body corporate, and to incur liabilities, before the date on which the functions of any magistrates' courts committee are transferred to it: s 27B(6) (as so added). A statutory instrument containing an order under s 27A(2) (as added) which makes an alteration of any area is subject to annulment in pursuance of a resolution of either House of Parliament: s 27B(8) (as so added).

11 See note 9 supra.

12 For these purposes, an order is taken to implement proposals if the order implements them without changes or any departures from the proposals do not, in the opinion of the Lord Chancellor, effect important changes in the proposals: Justices of the Peace Act 1997 s 27B(5) (as added: see note 3 supra).

13 Ie under ibid s 27B(1) (as added): see the text and notes 1-3 supra.

14 Ibid s 27B(4)(a) (as added: see note 3 supra).

15 Ibid s 27B(4)(b) (as added: see note 3 supra).

16 Ibid s 27B(4)(c) (as added: see note 3 supra).

## UPDATE

### 612-623 Magistrates' Courts Committees

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. Part 1 (ss 1-6) brings the administration of the whole court system under the auspices of the Lord Chancellor, and consequentially magistrates' courts committees are abolished. See further COURTS vol 10 (Reissue) PARA 502A.

### 614 Alteration of committee area

TEXT AND NOTES--The Lord Chancellor's functions under the 1997 Act s 27B (repealed with savings) are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(i) Magistrates' Courts Committees/B. MAGISTRATES' COURTS COMMITTEES OUTSIDE GREATER LONDON/615. Constitution and procedure of committees.

### 615. Constitution and procedure of committees.

A magistrates' courts committee for an area outside Greater London<sup>1</sup> is a body corporate<sup>2</sup>. It is composed of justices of the peace for the area to which the committee relates chosen in accordance with regulations about committees<sup>3</sup> made by the Lord Chancellor<sup>4</sup>. However, a magistrates' courts committee may also include persons (who need not be justices of the peace) co-opted by the committee with the approval of the Lord Chancellor or appointed by him<sup>5</sup>.

The Lord Chancellor may by statutory instrument make general regulations about the constitution, procedure and quorum of magistrates' courts committees for areas outside Greater London<sup>6</sup>. The regulations must provide for the members of committees who are justices of the peace for the area to which the committee relates<sup>7</sup> to be chosen by a selection panel constituted in accordance with the regulations<sup>8</sup>. The regulations may: (1) lay down an upper limit for the number of members of a magistrates' courts committee, inclusive of the members<sup>9</sup> co-opted by the committee with the approval of the Lord Chancellor or appointed by the Lord Chancellor<sup>10</sup>; and (2) enable the Lord Chancellor to direct that, in relation to any magistrates' courts committee to which the direction is given, any members so co-opted or appointed are to

be left out of account in applying the upper limit<sup>11</sup>. The regulations may make provision for the payment of remuneration to members of a magistrates' courts committee so co-opted or appointed<sup>12</sup>. The regulations may make provision with respect to the persons, other than the members, clerks and officers<sup>13</sup> of the committee, who may be entitled to attend the meetings of a magistrates' courts committee and the rights of such persons to make representations to the committee<sup>14</sup>. The regulations may make different provision in relation to magistrates' courts committees for different areas<sup>15</sup>.

A magistrates' courts committee for an area outside Greater London must appoint one of its members to be chairman of the committee<sup>16</sup>, but has power to regulate its own procedure, including quorum<sup>17</sup>. Such a committee may act through sub-committees appointed by it which, if it includes at least one member of the committee, may also include persons who are not members<sup>18</sup>, and may also arrange for the discharge of any of its functions by the chairman of the committee or by the justices' chief executive<sup>19</sup>. On at least one occasion in every calendar year, the committee must admit members of the public to a meeting of the committee<sup>20</sup>. The minutes of proceedings of every meeting of such a committee must be open to inspection by members of the public at the offices of the committee, except to the extent that the committee determines that the minutes disclose information of a confidential nature<sup>21</sup>.

1 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

2 Justices of the Peace Act 1997 s 30(6) (ss 28, 29, 30 all substituted by the Access to Justice Act 1999 s 82).

3 The regulations made under the Justices of the Peace Act 1997 s 29 (as substituted): see the text and notes 6-15 infra.

4 Ibid s 28(1) (as substituted: see note 2 supra). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

5 Ibid s 28(2) (as substituted: see note 2 supra).

6 Ibid s 29(1) (as substituted: see note 2 supra). Any such regulations have effect subject to the provisions of s 28 (as substituted) (see the text and notes 3-5 supra): s 29(1) (as so substituted). A statutory instrument containing, whether alone or with other provisions, any regulations so made is subject to annulment in pursuance of a resolution of either House of Parliament: s 29(7) (as so substituted). Where the magistrates for a petty sessions area are required to meet for the purpose of carrying out any functions under s 29 (as substituted), a meeting must be convened by the magistrates' courts committee or, if there is no such committee or the Lord Chancellor considers it appropriate, by the Lord Chancellor: s 30(2) (as so substituted). As to the meaning of 'magistrate' see PARA 501 ante. As to petty sessions areas see PARAS 591-592 ante.

The Magistrates' Courts Committee (Constitution) Regulations 1999, SI 1999/2395, were made under the Justices of the Peace Act 1997 s 29 (as originally enacted) and now take effect, by virtue of the Interpretation Act 1978 s 17(2)(b), as if made under the Justices of the Peace Act 1997 s 29 (as substituted). A committee member is appointed for three years and is eligible for re-appointment, but may not serve as a member of the committee for periods totalling more than nine years: see the Magistrates' Courts Committee (Constitution) Regulations 1999, SI 1999/2395, reg 8 (amended by SI 2001/2711). Provision is also made in relation to the appointment, period of service and termination of appointment of co-opted and appointed members: see the Magistrates' Courts Committee (Constitution) Regulations 1999, SI 1999/2395, reg 12 (amended by SI 2001/2711). For procedural requirements concerning casual vacancies on the committee see the Magistrates' Courts Committee (Constitution) Regulations 1999, SI 1999/2395, reg 9. The committee must appoint a chairman at its first meeting each year, for a term of one year, and he is eligible for re-appointment, but a justice may serve no more than a total of six terms of office as chairman: see reg 10. The proceedings of the committee are not invalidated by reason of any vacancy among the members or of any defect in the appointment of a member: reg 14. Provision is also made in relation to Lord Chancellor and the exercise of his default powers: see reg 16 (amended by SI 2001/2711). A quorum of the committee is constituted by three members: Magistrates' Courts Committee (Constitution) Regulations 1999, SI 1999/2395, reg 13.

7 The members referred to in the Justices of the Peace Act 1997 s 28(1) (as substituted): see the text and notes 3-4 supra.

8 Ibid s 29(2) (as substituted: see note 2 supra). Provision is made for the establishment and constitution of selection panels and the appointment to the panel of justices from each petty sessional area: see the Magistrates' Courts Committee (Constitution) Regulations 1999, SI 1999/2395, reg 5 (substituted by SI 2001/2711). Provision is also made as to the selection of the committee, including requiring the panel to select

candidates in accordance with selection criteria, which must be published: see the Magistrates' Courts Committee (Constitution) Regulations 1999, SI 1999/2395, reg 6. A candidate for appointment to the committee must be nominated and seconded, and must give written notice of his candidature to the clerk of the selection panel: see reg 7.

9 The members referred to in the Justices of the Peace Act 1997 s 28(2) (as substituted): see the text and note 5 supra.

10 Ibid s 29(3)(a) (as substituted: see note 2 supra). The committee must consist of not more than 12 members: see the Magistrates' Courts Committee (Constitution) Regulations 1999, SI 1999/2395, reg 11.

11 Justices of the Peace Act 1997 s 29(3)(b) (as substituted: see note 2 supra). See note 10 supra.

12 Ibid s 29(4) (as substituted: see note 2 supra).

13 As to the meaning of 'officer' see PARA 551 note 9 ante.

14 Justices of the Peace Act 1997 s 29(6) (as substituted: see note 2 supra).

15 Ibid s 29(5) (as substituted: see note 2 supra).

16 Ibid s 30(1) (as substituted: see note 2 supra). See the Magistrates' Courts Committee (Constitution) Regulations 1999, SI 1999/2395, reg 10; and note 6 supra.

17 Justices of the Peace Act 1997 s 30(5) (as substituted: see note 2 supra). As to the quorum of a magistrates' courts committee see the Magistrates' Courts Committee (Constitution) Regulations 1999, SI 1999/2395, reg 13; and note 6 supra.

18 Justices of the Peace Act 1997 s 30(3) (as substituted: see note 2 supra).

19 Ibid s 30(4) (as substituted: see note 2 supra). As to the justices' chief executive see PARA 624 et seq post.

20 Ibid s 30(7) (as substituted: see note 2 supra).

21 Ibid s 30(8) (as substituted: see note 2 supra). Copies of any minutes which are open to inspection under s 30(8) (as substituted) must be made available to the public on payment of such reasonable fee as the committee may in any case determine: s 30(9) (as so substituted). A magistrates' courts committee making a determination under s 30(8) (as substituted) must state its reasons for regarding the information in question as being of a confidential nature: s 30(10) (as so substituted).

## UPDATE

### 612-623 Magistrates' Courts Committees

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. Part 1 (ss 1-6) brings the administration of the whole court system under the auspices of the Lord Chancellor, and consequentially magistrates' courts committees are abolished. See further COURTS vol 10 (Reissue) PARA 502A.

### 615 Constitution and procedure of committees

TEXT AND NOTES--The Lord Chancellor's functions under the 1997 Act ss 29, 30 (repealed with savings) are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

NOTE 6--A committee member is no longer prohibited from serving for periods totalling more than nine years: SI 1999/2395 reg 8 (amended by SI 2003/2252).



Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(i) Magistrates' Courts Committees/C. THE GREATER LONDON MAGISTRATES' COURTS AUTHORITY/616. Constitution and procedure of the Authority.

### ***C. THE GREATER LONDON MAGISTRATES' COURTS AUTHORITY***

#### **616. Constitution and procedure of the Authority.**

The Greater London Magistrates' Courts Authority is a body corporate<sup>1</sup> and is the magistrates' courts committee for Greater London<sup>2</sup>. The Lord Chancellor<sup>3</sup> may by regulations made by statutory instrument make provision relating to the Authority, including provision about the membership of the Authority (including provision as to who is to chair it and about the payment of remuneration to its members), and provision about its constitution and procedure (including quorum and meetings)<sup>4</sup>.

The Authority may, with the approval of the Lord Chancellor, act through committees appointed by it which, if they include at least one member of the Authority, may also include persons who are not members<sup>5</sup>. The Authority may also arrange for the discharge of any of its functions by the chairman of the Authority or by the justices' chief executive<sup>6</sup>, and it has power to regulate its own procedure, including quorum<sup>7</sup>.

1 Justices of the Peace Act 1997 s 30A(1) (ss 30A, 30B, 30C all added by the Access to Justice Act 1999 s 83(1)). As to transitional provisions for the establishment of the Greater London Magistrates' Courts Authority, and the transfer of property, rights and liabilities to it see the Access to Justice Act 1999 s 105, Sch 14 paras 32-36; the Greater London Magistrates' Courts Authority (Transitional Provisions) Order 2000, SI 2000/240; and the Greater London Magistrates' Courts Authority (Provision of Courthouses etc) Regulations 2001, SI 2001/603.

2 Justices of the Peace Act 1997 s 30A(2) (as added: see note 1 supra).

3 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

4 Justices of the Peace Act 1997 s 30B(1) (as added: see note 1 supra). A statutory instrument containing (whether alone or with other provisions) regulations made by virtue of s 30B (as added) is subject to annulment in pursuance of a resolution of either House of Parliament: s 30B(2) (as so added).

The Authority consists of a maximum of 15 members unless the Lord Chancellor directs otherwise, and must comprise two members who are nominated by the Mayor of London to be a member of the Authority (mayoral nominees) and other members selected by a selection panel (see the Greater London Magistrates' Courts Authority (Constitution) Regulations 1999, SI 1999/3099, reg 4). As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81. As to the selection panel see reg 6. As to mayoral nominees see reg 5, and as to the provision of the name of the mayoral nominee where there is a vacancy in the office of Mayor or the Mayor is unable to act in his office see reg 19. A candidate for appointment as a member of the Authority must give written notice of his candidature (see reg 8), and provision is made as to the way in which the selection panel is to select members of the Authority (see reg 7). The members must meet the selection criteria: see reg 2, Sch 1. Provision is made as to the eligibility for, and rotation of, membership of the Authority (see regs 9, 10, Sch 3 (reg 9 amended by SI 2001/2712)), and in relation to the appointment, period of service and termination of appointment of co-opted and appointed members (see the Greater London Magistrates' Courts Authority (Constitution) Regulations 1999, SI 1999/3099, reg 13 (amended by SI 2001/2712)). For procedural requirements concerning casual vacancies on the committee see the Greater London Magistrates' Courts Authority (Constitution) Regulations 1999, SI 1999/3099, reg 12. The Authority must appoint a chairman at the first meeting of the Authority after 1 April 2002 and after 1 April in any subsequent year, to hold office until the next chairman appointment meeting, and although he is eligible for re-appointment, he may serve no more than a total of six terms of office as chairman: see reg 11. Members may receive travelling and subsistence allowances and other payments: see regs 14, 15, Sch 4 (Sch 4 amended by SI 2000/2149; SI 2001/2712). A quorum of the Authority is constituted by five members (see the Greater London Magistrates' Courts Authority (Constitution) Regulations 1999, SI 1999/3099, reg 16. Provision is made as to the proceedings of the Authority (see reg 17) and the exercise by the Lord Chancellor of his default powers (see reg 18 (amended by SI 2001/2712)). As to transitional provisions in relation to the clerk designate, the first selection panel, the notice of candidature for first members of the Authority and the appointment of first chairman of the Authority see the Greater London Magistrates' Courts Authority (Constitution) Regulations 1999, SI 1999/3099, reg 3, Sch 2.

5 Justices of the Peace Act 1997 s 30C(1) (as added: see note 1 supra).

6 Ibid s 30C(2) (as added: see note 1 supra). As to the justices' chief executive see PARA 624 et seq post.

7 Ibid s 30C(3) (as added: see note 1 supra). This provision is expressed to be subject to any regulations made under the Justices of the Peace Act 1997: s 30C(3) (as so added). See note 4 supra.

## **UPDATE**

### **612-623 Magistrates' Courts Committees**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. Part 1 (ss 1-6) brings the administration of the whole court system under the auspices of the Lord Chancellor, and consequentially magistrates' courts committees are abolished. See further COURTS vol 10 (Reissue) PARA 502A.

### **616 Constitution and procedure of the Authority**

TEXT AND NOTES--The Lord Chancellor's functions under the 1997 Act ss 30B, 30C (repealed with savings) are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

NOTE 1--SI 2001/603 revoked: SI 2005/562.

NOTE 4--SI 1999/3099 reg 15 amended: SI 2003/385. SI 1999/3099 Sch 4 further amended: SI 2004/76.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(i) Magistrates' Courts Committees/D. FUNCTIONS, POWERS AND DUTIES/617. Functions, powers and responsibilities of magistrates' courts committees.

## ***D. FUNCTIONS, POWERS AND DUTIES***

### **617. Functions, powers and responsibilities of magistrates' courts committees.**

Magistrates' courts committees have such functions as are conferred or imposed on them by the Justices of the Peace Act 1997 or any other enactment, and such other functions relating to matters of an administrative character as they may be authorised by the Lord Chancellor<sup>1</sup> to undertake<sup>2</sup>. Functions under the Justices of the Peace Act 1997 include:

- 70 (1) approval of persons or bodies for the purpose of executing warrants and maintenance of a register of the names of persons or bodies so approved<sup>3</sup>;
- 71 (2) submitting proposals for the alteration of a commission area<sup>4</sup>;
- 72 (3) submitting a draft order which makes alteration of a petty sessions area<sup>5</sup>;
- 73 (4) submitting to the Lord Chancellor such reports and plans as he may by regulations require<sup>6</sup>;
- 74 (5) requesting the Audit Commission<sup>7</sup> to undertake or promote comparative and other studies for improving the efficiency, effective and performance of the committee's functions and for improving the financial or other management of the committee<sup>8</sup>;

- 75 (6) appointing a justices' chief executive<sup>9</sup>;
- 76 (7) appointing justices' clerks<sup>10</sup>;
- 77 (8) making and administering schemes providing for training courses for justices of the peace for their area<sup>11</sup>.

Functions under other enactments include:

- 78 (a) making recommendations to the Lord Chancellor for the formation or dissolution of combined youth court panels or, if directed by the Lord Chancellor, reviewing the functioning of youth courts in their area and submitting a report to the Lord Chancellor<sup>12</sup>;
- 79 (b) making a direction for the formation or dissolution of a combined family panel<sup>13</sup> or, at the direction of the Lord Chancellor where he considers that a combined family panel ought to be formed or dissolved, reviewing the functioning of family proceedings courts in their area and submitting a report to him<sup>14</sup>.

A magistrates' courts committee is responsible for the efficient and effective administration of the magistrates' courts<sup>15</sup> for its area<sup>16</sup>. The Lord Chancellor may give directions to the committees requiring each of them, in discharging their responsibilities, to meet specified standards of performance<sup>17</sup>. The Lord Chancellor may also give directions to magistrates' courts committees requiring each of them to take specified steps, at such intervals as may be specified, for the purpose of keeping magistrates for its area informed as to the activities of the committee and for the purposes of ascertaining the views of those magistrates<sup>18</sup> on particular matters related to the functions of the committee<sup>19</sup>. Such directions may be given to all magistrates' courts committees or to one or more particular committees<sup>20</sup>. The Lord Chancellor must arrange for any direction so given to be published in such manner as he thinks fit<sup>21</sup>.

It is also the duty of every magistrates' courts committee to provide training courses for justices' clerks<sup>22</sup> and the staff of the committee<sup>23</sup>.

1 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 Justices of the Peace Act 1997 s 27 (substituted by the Access to Justice Act 1999 s 81). Magistrates' courts committees in existence before 19 June 1997 (ie the commencement of the Justices of the Peace Act 1997) are treated as if they had been set up in accordance with Pt III (ss 27-39B) (as amended) of that Act: see s 73(1), Sch 4 paras 13, 14.

3 See *ibid* s 31A (as added); and PARA 618 post.

4 See *ibid* s 32A(1) (as added); and PARA 507 ante. As to the alteration of commission areas see PARA 507 ante.

5 See *ibid* s 33(1) (as substituted); and PARA 592 ante. As to the alteration of petty sessions areas see ss 33, 34 (s 33 as substituted; s 34 as amended); and PARA 592 ante.

6 See *ibid* s 37(2); and PARA 622 post.

7 As to the Audit Commission see LOCAL GOVERNMENT vol 69 (2009) PARA 744 et seq.

8 See the Justices of the Peace Act 1997 s 39; and PARA 620 post.

9 See *ibid* s 40 (as amended); and PARA 624 post.

10 See *ibid* s 42; and PARA 631 post.

11 See *ibid* s 64; and PARAS 516 ante, 631 post.

12 See the Children and Young Persons Act 1933 s 45 (as amended), Sch 2 paras 4, 5 (as substituted and amended); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1264.

- 13 See the Family Proceedings Courts (Constitution) Rules 1991, SI 1991/1405, r 11; and PARA 606 ante.
- 14 See the Magistrates' Courts Act 1980 s 68 (as amended); and PARA 606 ante.
- 15 For the meaning of 'magistrates' court' see PARA 583 ante.
- 16 Justices of the Peace Act 1997 s 31(1).
- 17 Ibid s 31(4). In discharging its responsibilities under s 31(1) (see the text and notes 15-16 supra), a magistrates' courts committee must have regard to the needs of court users who are disabled; and so long as any direction under s 31(4) is in force, the standards of performance so required must include standards relating to the provision made for such court users: s 31(6).
- 18 As to the meaning of 'magistrate' see PARA 501 ante.
- 19 Justices of the Peace Act 1997 s 31(5).
- 20 Ibid s 31(7).
- 21 Ibid s 31(8).
- 22 As to justices' clerks see PARA 631 et seq post.
- 23 Justices of the Peace Act 1997 s 31(3).

## **UPDATE**

### **612-623 Magistrates' Courts Committees**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. Part 1 (ss 1-6) brings the administration of the whole court system under the auspices of the Lord Chancellor, and consequentially magistrates' courts committees are abolished. See further COURTS vol 10 (Reissue) PARA 502A.

### **617 Functions, powers and responsibilities of magistrates' courts committees**

TEXT AND NOTES 16-23--The Lord Chancellor's functions under the 1997 Act s 31 (repealed with savings) are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(i) Magistrates' Courts Committees/D. FUNCTIONS, POWERS AND DUTIES/618. Execution of warrants.

### **618. Execution of warrants.**

A magistrates' courts committee may approve persons or bodies for the purpose of the execution of warrants<sup>1</sup>. The Lord Chancellor<sup>2</sup> may by statutory instrument make regulations as to conditions which must be satisfied by a person or body in order to be so approved and the procedure by which a person or body may be so approved<sup>3</sup>. A decision by a magistrates' courts committee to revoke the approval of a person or body does not have effect to revoke the approval until the committee has informed the person or body in writing of the decision<sup>4</sup>.

A magistrates' courts committee must maintain a register containing the names of all persons and bodies so approved by the committee or stating that no person or body has been so approved<sup>5</sup>. Copies of the register kept by a committee must be available for inspection by members of the public in every petty-sessional courthouse<sup>6</sup> in the committee's area during the hours that the courthouse is open to the public<sup>7</sup>.

1 Justices of the Peace Act 1997 s 31A(1) (s 31A added by the Access to Justice Act 1999 s 93(1)). The execution of warrants referred to in the text is pursuant to the Magistrates' Courts Act 1980 s 125B (as added) (see PARA 861 post): see the Justices of the Peace Act 1997 s 31A(1) (as so added).

2 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 Justices of the Peace Act 1997 s 31A(2) (as added: see note 1 supra). A statutory instrument containing (whether alone or with other provisions) regulations made by virtue of s 31A(2) (as added) is subject to annulment in pursuance of a resolution of either House of Parliament: s 31A(3) (as so added). As to the regulations made under s 31A(2) (as added) see the Approval of Enforcement Agencies Regulations 2000, SI 2000/3279.

4 Justices of the Peace Act 1997 s 31A(6) (as added: see note 1 supra)

5 Ibid s 31A(4) (as added: see note 1 supra).

6 For the meaning of 'petty-sessional courthouse' see PARA 584 ante.

7 Justices of the Peace Act 1997 s 31A(5) (as added: see note 1 supra).

## UPDATE

### 612-623 Magistrates' Courts Committees

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. Part 1 (ss 1-6) brings the administration of the whole court system under the auspices of the Lord Chancellor, and consequentially magistrates' courts committees are abolished. See further COURTS vol 10 (Reissue) PARA 502A.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(i) Magistrates' Courts Committees/D. FUNCTIONS, POWERS AND DUTIES/619. Court security.

### 619. Court security.

Magistrates' courts committees may provide court security officers to maintain order in the magistrates' courts<sup>1</sup>.

In relation to each petty sessions area<sup>2</sup> outside Greater London<sup>3</sup>, the magistrates' courts committee whose area consists of or includes that petty sessions area must from time to time determine<sup>4</sup>: (1) whether court security officers ought to be provided, that is to say, persons whose duty it is to maintain order in any courthouse<sup>5</sup> to which they are for the time being assigned by the committee<sup>6</sup>; and (2) if so, how many such officers ought to be provided, and whether they ought to be provided by the committee or by the paying authority<sup>7</sup> or authorities<sup>8</sup>. As soon as practicable after the making of a determination under head (2) above, the committee or, as the case may be, the paying authority or authorities must provide the required number of court security officers, on such terms and conditions as they may determine<sup>9</sup>: (a) by employing persons to act as court security officers<sup>10</sup>; or (b) by entering into a contract with another person for the employment by him of persons to act as such officers<sup>11</sup>.

Before making any determination under head (1) or head (2) above, the committee must consult with the paying authority or authorities<sup>12</sup>. Where, any paying authority is aggrieved by any such determination made by the committee, the authority may, within one month from the receipt by the authority of written notice of the determination, appeal to the Lord Chancellor<sup>13</sup>, whose decision is binding on the committee and the authority<sup>14</sup>.

In relation to each petty sessions area within Greater London, the Greater London Magistrates' Courts Authority<sup>15</sup> must from time to time determine whether court security officers ought to be provided and if so, how many such officers ought to be provided<sup>16</sup>. As soon as practicable after making a such determination, the Greater London Magistrates' Courts Authority must provide the required number of court security officers, on such terms and conditions as it may determine, by employing persons to act as court security officers, or by entering into a contract with another person for the employment by him of persons to act as such officers<sup>17</sup>.

A court security officer acting in the execution of his duty<sup>18</sup> has power to:

- 80 (i) search any person who is in or is seeking to enter the courthouse, and any article in the possession of such a person<sup>19</sup>;
- 81 (ii) exclude or remove from the courthouse any person who refuses to permit such a search as mentioned in head (i) above, or refuses to surrender any article in his possession which the officer reasonably believes may jeopardise the maintenance of order in the courthouse<sup>20</sup>;
- 82 (iii) exclude or remove any person from the courthouse, or restrain any person in the courthouse, where, in either case, it is reasonably necessary to do so in order to maintain order in the courthouse, to enable court business to be carried on without interference or delay, or to secure his or any other person's safety<sup>21</sup>.

In the execution of his duty, a court security officer must act in accordance with any general or specific instructions which have been given to him, whether orally or in writing, by a person in authority<sup>22</sup>. Any person who assaults a court security officer acting in the execution of his duty is liable on summary conviction to a fine<sup>23</sup> or to imprisonment<sup>24</sup> or to both<sup>25</sup>. Any person who resists or wilfully obstructs a court security officer acting in the execution of his duty is liable on summary conviction to a fine<sup>26</sup>.

1 See the Criminal Justice Act 1991 s 76 (as amended); and the text and notes infra.

2 As to petty sessions areas see PARAS 591-592 ante.

3 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

4 Criminal Justice Act 1991 s 76(1), (6) (s 76(1) amended by the Access to Justice Act 1999 s 83(3), Sch 12 para 7(1), (2); and the Criminal Justice Act 1991 s 76(6) substituted by the Police and Magistrates' Courts Act 1994 s 91, Sch 8 para 33(1), (6)). As to magistrates' courts committees outside Greater London see PARAS 613-615 ante.

5 'Courthouse' means a petty sessional courthouse within the meaning of the Magistrates' Courts Act 1980 (see PARA 584 ante) or an occasional courthouse appointed under s 147 (see PARA 585 ante): Criminal Justice Act 1991 ss 92(1).

6 Ibid s 76(1)(a).

7 For the meaning of 'paying authority' see PARA 642 note 1 ante; definition applied by ibid s 76(6) (as substituted (see note 4 supra); and amended by the Justices of the Peace Act 1997 s 73(2), Sch 5 para 29(1), (2)).

8 Criminal Justice Act 1991 s 76(1)(b) (amended by the Police and Magistrates' Courts Act 1994 s 91, Sch 8 Pt II para 33(2)).

- 9 Criminal Justice Act 1991 s 76(2) (amended by the Police and Magistrates' Courts Act 1994 s 91, Sch 8 Pt II para 33(2)).
- 10 Criminal Justice Act 1991 s 76(2)(a).
- 11 Ibid s 76(2)(b).
- 12 Ibid s 76(3) (amended by the Police and Magistrates' Courts Act 1994 ss 91, 93, Sch 8 Pt II para 33(3), Sch 9 Pt II).
- 13 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.
- 14 Criminal Justice Act 1991 s 76(4) (amended by the Police and Magistrates' Courts Act 1994 s 91, Sch 8, Pt II para 33(4); and the Transfer of Functions (Magistrates' Courts and Family Law) Order 1992, SI 1992/709, art 2(1), (3), Sch 1).
- 15 As to the Greater London Magistrates' Courts Authority see PARA 616 ante.
- 16 Criminal Justice Act 1991 s 76(4A) (s 76(4A), (4B) added by the Access to Justice Act 1999 s 83(3), Sch 12 para 7(1), (3)).
- 17 Criminal Justice Act 1991 s 76(4B) (as added: see note 16 supra).
- 18 For the purposes of *ibid* s 77 (as amended), and s 78, a court security officer is not to be regarded as acting in the execution of his duty at any time when he is not readily identifiable as such an officer, whether by means of a uniform or badge which he is wearing or otherwise: s 77(6).
- 19 Ibid s 77(1)(a). The powers conferred by s 77(1)(a) to search a person are not to be construed as authorising a court security officer to require a person to remove any of his clothing other than an outer coat, jacket or gloves: s 77(2).
- 20 Ibid s 77(1)(b). The powers conferred by s 77(1)(b), (c) include power to use reasonable force, where necessary: s 77(3).
- 21 Ibid s 77(1)(c).
- 22 Ibid s 77(4). For these purposes, 'person in authority', in relation to any courthouse, means: (1) a justice of the peace, justices' chief executive or justices' clerk who is exercising any functions in the courthouse; and (2) any officer or staff of the magistrates' courts committee authorised by such a justices' chief executive or clerk for the purpose: s 77(5) (amended by the Police and Magistrates' Courts Act 1994 s 91, Sch 8 Pt II para 34). As to the justices' chief executive see PARA 624 et seq post. As to justices' clerks see PARA 631 et seq post.
- 23 The fine must not exceed level 5 on the standard scale: Criminal Justice Act 1991 s 78(1). As to the standard scale see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 6.
- 24 The term of imprisonment must not exceed six months: *ibid* s 78(1).
- 25 Ibid s 78(1).
- 26 Ibid s 78(2). The fine must not exceed level 3 on the standard scale: s 78(2).

## UPDATE

### 612-623 Magistrates' Courts Committees

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. Part 1 (ss 1-6) brings the administration of the whole court system under the auspices of the Lord Chancellor, and consequentially magistrates' courts committees are abolished. See further COURTS vol 10 (Reissue) PARA 502A.

### 619 Court security

TEXT AND NOTES--Criminal Justice Act 1991 ss 76-78 (repealed) replaced by Courts Act 2003 ss 51-57.

Every court security officer must be so designated by the Lord Chancellor: s 51. See further Constitutional Reform Act 2005 s 19, Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1. For transitional provision see the Courts Act 2003 (Transitional Provisions, Savings and Consequential Provisions) Order 2005, SI 2005/911 (amended by SI 2006/680). As to the training which must be completed by court security officers and the conditions that must be satisfied before a person may be designated as a court security officer, see the Court Security Officers (Designation) Regulations 2005, SI 2005/588.

Court security officers have the power to search a person who is entering, or who is already in, a court building and any article in the possession of such a person (2003 Act s 52) and have the power to restrain persons or exclude, or remove them from a court building (s 53). A court security officer must request the surrender of any article which he reasonably believes ought to be surrendered (s 54) and has power to retain an article surrendered or seized until the person from whom it was taken is leaving the court building (s 55). The person from whom the article is taken must be provided with adequate information about the terms of retention and given notice that when an article becomes unclaimed it will be disposed of: s 56.

Assaulting a court security officer in the execution of his duty is an offence, punishable on summary conviction with a fine not exceeding level 5 on the standard scale or imprisonment for up to six months or with both: s 57(1), (3). As to the standard scale see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 6.

Resisting or wilfully obstructing a court security officer acting in the execution of his duty is also an offence, punishable on summary conviction with a fine not exceeding level 3 on the standard scale: s 57(3), (4).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(i) Magistrates' Courts Committees/D. FUNCTIONS, POWERS AND DUTIES/620. Studies by the Audit Commission.

## **620. Studies by the Audit Commission.**

At the request of a magistrates' courts committee, the Audit Commission<sup>1</sup> may undertake or promote comparative and other studies: (1) designed to enable the Commission to make recommendations for improving economy, efficiency and effectiveness in the performance of the committee's functions<sup>2</sup>; and (2) for improving the financial or other management of the committee<sup>3</sup>. Any committee which has requested such a study, and any officer<sup>4</sup> or member of such a committee, must provide the Commission, or any person authorised by it, with such information as it or he may reasonably require for the carrying out of the study<sup>5</sup>. The Commission must charge the committee concerned such fees for any such study as will cover the full cost of carrying it out<sup>6</sup>.

1 'The Audit Commission' means the Audit Commission for Local Authorities and the National Health Service in England and Wales: Justices of the Peace Act 1997 s 39(4). As to the Audit Commission see LOCAL GOVERNMENT vol 69 (2009) PARA 744 et seq.

2 Ibid s 39(1)(a).

3 Ibid s 39(1)(b).

4 As to the meaning of 'officer' see PARA 551 note 9 ante.

5 Justices of the Peace Act 1997 s 39(2).



6 Ibid s 39(3).

## UPDATE

### 612-623 Magistrates' Courts Committees

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. Part 1 (ss 1-6) brings the administration of the whole court system under the auspices of the Lord Chancellor, and consequentially magistrates' courts committees are abolished. See further COURTS vol 10 (Reissue) PARA 502A.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(i) Magistrates' Courts Committees/D. FUNCTIONS, POWERS AND DUTIES/621. Code of conduct for members of magistrates' courts committees and selection panels.

#### **621. Code of conduct for members of magistrates' courts committees and selection panels.**

The Lord Chancellor<sup>1</sup> may prepare a code of conduct to be observed by members of magistrates' courts committees, and members of selection panels for choosing members of such committees<sup>2</sup>. He may also from time to time prepare a revised version of the code<sup>3</sup>, but before preparing the code, or a revised version of it, he must undertake such consultation as appears to him to be appropriate<sup>4</sup>.

If the Lord Chancellor is of the opinion that a member of a magistrates' courts committee, or a member of a selection panel for choosing members of such a committee, has, without reasonable excuse, failed to observe the code, he may make an order which must state that he is of such an opinion, and may provide either or both of the following<sup>5</sup>: (1) that, on the making of the order, the person is to cease to be a member of the committee or selection panel concerned or to cease to be such a member for a specified period<sup>6</sup>; or (2) that, for a specified period, the person may not be appointed, or co-opted, as a member of any magistrates' courts committee or any selection panel for choosing members of such a committee<sup>7</sup>. The Lord Chancellor may by regulations made by statutory instrument make provision for the purpose of establishing whether persons have failed to observe the code<sup>8</sup>.

1 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 Justices of the Peace Act 1997 s 39A(1) (ss 39A, 39B both added by the Access to Justice Act 1999 s 86). The code of conduct is contained in the Code of Conduct (Magistrates' Courts Committee and Selection Panels) Order 2000, SI 2000/2148.

3 Justices of the Peace Act 1997 s 39A(2) (as added: see note 2 supra). Any revised version of the code comes into force as provided by order made by the Lord Chancellor by statutory instrument, and such an order must set out the revised version: s 39A(4) (as so added). A statutory instrument containing such an order is subject to annulment in pursuance of a resolution of either House of Parliament: s 39A(5) (as so added).

4 Ibid s 39A(3) (as added: see note 2 supra).

5 Ibid s 39B(1), (2) (as added: see note 2 supra).

6 Ibid s 39B(2)(a) (as added: see note 2 supra).

7 Ibid s 39B(2)(b) (as added: see note 2 supra).

8 Ibid s 39B(3) (as added: see note 2 supra). A statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of either House of Parliament: s 39B(4) (as so added). At the date at which this volume states the law, no such regulations had been made.

## UPDATE

### 612-623 Magistrates' Courts Committees

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. Part 1 (ss 1-6) brings the administration of the whole court system under the auspices of the Lord Chancellor, and consequentially magistrates' courts committees are abolished. See further COURTS vol 10 (Reissue) PARA 502A.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(i) Magistrates' Courts Committees/D. FUNCTIONS, POWERS AND DUTIES/622. Reports and plans.

### 622. Reports and plans.

The Lord Chancellor<sup>1</sup> may by regulations made by statutory instrument require magistrates' courts committees to submit to him such reports and plans, in relation to matters for which they are responsible, as may be prescribed<sup>2</sup>. Any such report or plan so required: (1) must be prepared in the prescribed manner, after such consultation as may be prescribed, and within such time as may be prescribed<sup>3</sup>; (2) must be in the prescribed form<sup>4</sup>; (3) must be sent to such persons as may be prescribed<sup>5</sup>; and (4) must be made available to the public on payment of such reasonable fee as the magistrates' courts committee may in any case determine<sup>6</sup>.

The Lord Chancellor may direct any one or more magistrates' courts committees to produce such additional reports or plans in relation to matters for which they are responsible as may be specified in the direction<sup>7</sup>.

1 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 Justices of the Peace Act 1997 s 37(1). For these purposes, 'prescribed' means prescribed by regulations made by the Lord Chancellor by statutory instrument; and a statutory instrument containing, whether alone or with other provisions, regulations made by virtue of s 37 is subject to annulment in pursuance of a resolution of either House of Parliament: s 37(4). At the date at which this volume states the law, no such regulations have been made.

3 Ibid s 37(2)(a).

4 Ibid s 37(2)(b).

5 Ibid s 37(2)(c).

6 Ibid s 37(2)(d).

7 Ibid s 37(3).

## UPDATE

### 612-623 Magistrates' Courts Committees

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. Part 1 (ss 1-6) brings the administration of the whole court system under the auspices of the Lord

Chancellor, and consequentially magistrates' courts committees are abolished. See further COURTS vol 10 (Reissue) PARA 502A.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(i) Magistrates' Courts Committees/D. FUNCTIONS, POWERS AND DUTIES/623. Default powers of the Lord Chancellor.

### **623. Default powers of the Lord Chancellor.**

If the Lord Chancellor<sup>1</sup> is of the opinion that, without reasonable excuse, a magistrates' courts committee is failing properly to discharge any duty imposed on it by or under any enactment, or has so failed and is likely to do so again, he may make an order<sup>2</sup>: (1) stating that he is of such an opinion<sup>3</sup>; and (2) providing either or both of the following: (a) that, on the making of the order, the chairman of the committee is to vacate his office as chairman<sup>4</sup>; or (b) that, on the making of the order, one or more specified members of the committee (who may include the chairman but may not consist of all the members of the committee) are to vacate their office<sup>5</sup>. Before making such an order, the Lord Chancellor must give a written warning to the magistrates' courts committee specifying the default or defaults to which the order relates<sup>6</sup>.

If, after making such an order, the Lord Chancellor remains of the same opinion, he may make an order: (i) stating that he remains of that opinion<sup>7</sup>; and (ii) providing (A) that all the members of the committee are to vacate their office on the making of the order<sup>8</sup>; and (B) that for a specified period, not exceeding three months beginning with the making of the order, the committee is to consist of persons nominated by the Lord Chancellor, who need not be justices of the peace<sup>9</sup>. Such an order must provide for new members of the committee to be chosen, in accordance with regulations<sup>10</sup>, to take office at the end of the specified period<sup>11</sup>.

1 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 Justices of the Peace Act 1997 s 38(1), (3).

3 Ibid s 38(3)(a).

4 Ibid s 38(3)(b)(i).

5 Ibid s 38(3)(b)(ii).

6 Ibid s 38(2).

7 Ibid s 38(4)(a).

8 Ibid s 38(4)(b)(i).

9 Ibid s 38(4)(b)(ii).

10 The regulations made under ibid s 29 (as substituted): see PARA 615 ante.

11 Ibid s 38(5).

### **UPDATE**

#### **612-623 Magistrates' Courts Committees**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. Part 1 (ss 1-6) brings the administration of the whole court system under the auspices of the Lord

Chancellor, and consequentially magistrates' courts committees are abolished. See further COURTS vol 10 (Reissue) PARA 502A.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(ii) Justices' Chief Executives/624. Appointment and terms of employment.

## **(ii) Justices' Chief Executives**

### **624. Appointment and terms of employment.**

Every magistrates' courts committee<sup>1</sup> must appoint a justices' chief executive<sup>2</sup>. The justices' chief executive so appointed is: (1) the justices' chief executive for every magistrates' court for the committee's area<sup>3</sup>; and (2) the justices' chief executive for every petty sessions area<sup>4</sup> for which it is the committee<sup>5</sup>; and (3) the chief executive to the justices for every such petty sessions area<sup>6</sup>. A person may not be appointed as justices' chief executive unless<sup>7</sup>: (a) the magistrates' courts committee has submitted to the Lord Chancellor<sup>8</sup>, in accordance with regulations<sup>9</sup>, an application for approval of one or more persons offering themselves for appointment<sup>10</sup>; (b) the Lord Chancellor has approved one or more of those persons<sup>11</sup>; and (c) the person appointed is a person so approved<sup>12</sup>.

A person may not be appointed both as justices' chief executive and as justices' clerk for a petty sessions area unless the Lord Chancellor has agreed that he may hold both appointments<sup>13</sup>. Where a person so holds an appointment as justices' chief executive with an appointment as justices' clerk<sup>14</sup> for a petty sessions area, he must not exercise any functions as justices' clerk for the petty sessions area unless authorised to do so, either generally or in any particular case, by the magistrates' courts committee for the area which includes that petty sessions area<sup>15</sup>.

Except as provided by the Justices of the Peace Act 1997, a justices' chief executive is employed by the magistrates' courts committee on such terms as it may determine, and he holds and vacates office in accordance with the terms of his contract of service<sup>16</sup>. The approval of the Lord Chancellor is required for any determination by a magistrates' courts committee reducing the salary of a justices' chief executive, unless the justices' chief executive concerned consents to the reduction<sup>17</sup>.

1 As to magistrates' courts committees see PARA 612 et seq ante.

2 Justices of the Peace Act 1997 s 40(1).

3 Ibid s 40(1A)(a) (s 40(1A) added by the Access to Justice Act 1999 s 88).

4 As to petty sessions areas see PARAS 591-592 ante.

5 Justices of the Peace Act 1997 s 40(1A)(b) (as added: see note 3 supra).

6 Ibid s 40(1A)(c) (as added: see note 3 supra).

7 Ibid s 40(2). Where a person employed as a justices' chief executive under a contract for a fixed term is re-appointed on the expiry of that term, s 40(2) does not apply in relation to the re-appointment: s 40(3).

8 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

9 For these purposes, 'regulations' means regulations made by the Lord Chancellor by statutory instrument which may make different provision in relation to the Greater London Magistrates' Courts Authority and other magistrates' courts committees: Justices of the Peace Act 1997 s 40(8) (amended by the Access to Justice Act

1999 s 83(3), Sch 12 paras 9, 11). A statutory instrument containing, whether alone or with other provisions, regulations made by virtue of the Justices of the Peace Act 1997 s 40 (as amended) is subject to annulment in pursuance of a resolution of either House of Parliament: s 40(8). For the procedure to be followed in submitting applications for approval of persons to be appointed under s 40 (as amended) see the Justices' Chief Executives and Justices' Clerks (Appointment) Regulations 1999, SI 1999/2397. As to the Greater London Magistrates' Courts Authority see PARA 616 ante. As to magistrates' courts committees outside Greater London see PARAS 613-615 ante.

10 Justices of the Peace Act 1997 s 40(2)(a). Where the Lord Chancellor declines to approve any person who is named in an application under s 40(2)(a), he must inform the magistrates' courts committee of the reasons for his decision: s 40(4).

11 Ibid s 40(2)(b).

12 Ibid s 40(2)(c).

13 Ibid s 40(6).

14 As to justices' clerks see PARA 631 et seq post.

15 Justices of the Peace Act 1997 s 40(7).

16 Ibid s 44(1).

17 Ibid s 44(1A) (added by the Access to Justice Act 1999 s 83(3), Sch 12 paras 9, 12).

## UPDATE

### 624-630 Justices' Chief Executives

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. Part 1 (ss 1-6) brings the administration of the whole court system under the auspices of the Lord Chancellor, and consequentially the office of justices' chief executive is abolished. See further COURTS vol 10 (Reissue) PARA 502A.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(ii) Justices' Chief Executives/625. Role of the justices' chief executive.

### 625. Role of the justices' chief executive.

The justices' chief executive appointed by any magistrates' courts committee<sup>1</sup> must make arrangements for the efficient and effective administration of the magistrates' courts<sup>2</sup> for the area to which the committee relates<sup>3</sup>. For that purpose, the administration of the magistrates' courts for the area to which a magistrates' courts committee relates includes: (1) the exercise of the function of acting as clerk to the committee<sup>4</sup>; and (2) the exercise of all of the functions conferred or imposed on justices' chief executives by or under any other enactment so far as relating to any of those courts or that committee<sup>5</sup>. The duty imposed on a justices' chief executive to make arrangements for the efficient and effective administration of the magistrates' court<sup>6</sup> in particular requires him to allocate responsibility for what falls to be done in the exercise of his functions among justices' clerks<sup>7</sup> and the staff of the committee, and to determine the administrative procedures to be followed by them<sup>8</sup>.

The justices' chief executive appointed by a magistrates' courts committee must also make arrangements for discussions relating to matters of law, including procedure and practice, among the justices' clerks appointed by the committee, in particular with a view to securing consistency in the advice given by them to justices about such matters<sup>9</sup>.

The justices' chief executive appointed by a magistrates' courts committee must perform the duties imposed on him by these provisions<sup>10</sup> and any other functions conferred or imposed on him by or under any other enactment, in accordance with any directions given to him by the committee<sup>11</sup>. The justices' chief executive appointed by a magistrates' courts committee may give directions to justices' clerks and the staff of the committee as to the carrying out of their responsibilities, including the performance of any functions conferred or imposed on them by or under any enactment<sup>12</sup>.

1 As to magistrates' courts committees see PARA 612 et seq ante. As to the appointment of the justices' chief executive see PARA 624 ante.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 Justices of the Peace Act 1997 s 41(1) (s 41 substituted by the Access to Justice Act 1999 s 88(1)).

4 Justices of the Peace Act 1997 s 41(2)(a) (as substituted: see note 3 supra).

5 Ibid s 41(2)(b) (as substituted: see note 3 supra).

6 Ie under ibid s 41(1) (as substituted): see the text and notes 1-3 supra.

7 As to justices' clerks see PARA 631 et seq post.

8 Justices of the Peace Act 1997 s 41(3) (as substituted: see note 3 supra).

9 Ibid s 41(4) (as substituted: see note 3 supra).

10 Ie by ibid s 41 (as substituted).

11 Ibid s 41(5) (as substituted: see note 3 supra).

12 Ibid s 41(6) (as substituted: see note 3 supra) (which is expressed to be subject to s 48 (as substituted) (independence of justices' clerks and staff exercising legal functions) (see PARA 639 post): s 41(6) (as so substituted)).

## UPDATE

### 624-630 Justices' Chief Executives

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. Part 1 (ss 1-6) brings the administration of the whole court system under the auspices of the Lord Chancellor, and consequentially the office of justices' chief executive is abolished. See further COURTS vol 10 (Reissue) PARA 502A.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(ii) Justices' Chief Executives/626. Duties in relation to payments, accounting and banking.

### 626. Duties in relation to payments, accounting and banking.

The Lord Chancellor<sup>1</sup>, with the concurrence of the Treasury<sup>2</sup>, may by statutory instrument make regulations<sup>3</sup>:

- 83 (1) as to the times at which, and the manner in which, a justices' chief executive must pay sums payable by him to the Lord Chancellor or any other person<sup>4</sup>;

- 84 (2) requiring the keeping and production of accounts by justices' chief executives in respect of sums received by them (apart from any received on account of their salaries or expenses as such) and for the inspection and audit of the accounts required to be kept<sup>5</sup>; and
- 85 (3) requiring justices' chief executives to use specified banking arrangements or facilities, or banking arrangements or facilities of a specified description, in relation to sums received by them (apart from any received on account of their salaries or expenses as such)<sup>6</sup>.

1 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

3 Justices of the Peace Act 1997 s 60A (added by the Access to Justice Act 1999 s 91(3)). As to the regulations made under the Justices of the Peace Act 1997 s 60A (as added) see the Justices' Chief Executives (Accounts) Regulations 2001, SI 2001/463. Formerly, accounting duties were the responsibility of the justices' clerk, and the Lord Chancellor had the power to make regulations as to the time at which, and the manner in which, justices' clerks were to account for and pay the sums payable to the Lord Chancellor under the Justices of the Peace Act 1997 s 60 (as amended) (see PARA 881 post), and as to the keeping, inspection and audit of accounts of justices' clerks: see s 60(4) (repealed). By virtue of the Justices of the Peace Act 1979 s 71, Sch 1 para 2, and the Justices of the Peace Act 1997 s 73(1), Sch 4 para 1(2), the Justices' Clerks (Accounts) Regulations 1973, SI 1973/579, took effect as if made under the Justices of the Peace Act 1997 s 60(4). Notwithstanding the repeal of s 60(4), the Justices' Clerks (Accounts) Regulations 1973, SI 1973/579 (amended by virtue of SI 1992/709) continue to have effect in respect of all sums received or paid by, or owed to, a justices' clerk: Access to Justice Act 1999 (Commencement No 7, Transitional Provisions and Savings) Order 2001, SI 2001/916, art 4, Sch 1 para 5. Recommendations and advice for the minimum accounting standards that ought to be maintained are contained in the Justices' Clerks' Accounting Manual (JCAM). It is expected that the manual will be revised in light of the transferral of accounting duties to the justices' chief executive.

4 Justices of the Peace Act 1997 s 60A(a) (as added: see note 3 supra).

5 Ibid s 60A(b) (as added: see note 3 supra).

6 Ibid s 60A(c) (as added: see note 3 supra).

## UPDATE

### 624-630 Justices' Chief Executives

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. Part 1 (ss 1-6) brings the administration of the whole court system under the auspices of the Lord Chancellor, and consequentially the office of justices' chief executive is abolished. See further COURTS vol 10 (Reissue) PARA 502A.

### 626 Duties in relation to payments, accounting and banking

TEXT AND NOTES--Replaced by Courts Act 2003 s 40.

NOTE 3--SI 2001/463 amended: SI 2001/3649. Justices' Clerks' Accounting Manual has been revised and renamed Magistrates' Courts Accounting Manual.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(ii) Justices' Chief Executives/627. Duties as collecting officer.

### 627. Duties as collecting officer.

A justices' chief executive is, by virtue of his office, the collecting officer of each of the courts for the area of the magistrates' courts committee which appointed him<sup>1</sup>. In this capacity he receives payments which persons are required to make under orders made by a magistrates' court for periodical payments, and pays these sums to the persons entitled to receive them<sup>2</sup>.

1 Justices of the Peace Act 1997 s 41A(1) (added by the Access to Justice Act 1999 s 91(1)). A justices' chief executive must act under any order made under the Criminal Justice Administration Act 1914 s 30 (repealed) (which provided for periodical payments under court orders to be made through an officer of the court or other third party) which, in accordance with the provisions of the Justices of the Peace Act 1997 s 73(1), Sch 4 para 16A (as added), has effect to direct the payment of money to him: s 41A(2) (as so added). Section 41A (as added) is without prejudice to the provisions of the Magistrates' Courts Act 1980 s 59 (as substituted and amended) (periodical payments through justices' chief executive) (see PARA 820 post), s 59A (as added and amended) and s 62 (as amended) (proceedings by justices' chief executive) (see PARAS 821, 825 post): Justices of the Peace Act 1997 s 41A(3) (as so added). When receiving money paid periodically pursuant to a maintenance order of a magistrates' court, a collecting officer is not the agent of the justices: *O'Connor v Isaacs* [1956] 2 QB 288 at 351, [1956] 2 All ER 417 at 434, CA, per Singleton LJ.

2 See the Magistrates' Courts Act 1980 s 59 (as substituted and amended); and PARA 820 post. As to orders for periodical payments see ss 59-62 (as amended); the Magistrates' Courts Rules 1981, SI 1981/552, rr 39-45 (as amended); and PARAS 820-825 post.

## UPDATE

### 624-630 Justices' Chief Executives

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. Part 1 (ss 1-6) brings the administration of the whole court system under the auspices of the Lord Chancellor, and consequentially the office of justices' chief executive is abolished. See further COURTS vol 10 (Reissue) PARA 502A.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(ii) Justices' Chief Executives/628. Duty to keep the register.

#### 628. Duty to keep the register.

The justices' chief executive for every magistrates' court<sup>1</sup> must keep a register<sup>2</sup> in which must be entered a minute or memorandum of every adjudication of the court<sup>3</sup> and of every other proceeding or thing required by the rules<sup>4</sup> or any other enactment<sup>5</sup> to be so entered<sup>6</sup>.

The entries in the register must be signed or their accuracy certified<sup>7</sup> by one of the justices, or the justice, before whom the proceedings to which they relate took place or by the clerk who was present when those proceedings took place<sup>8</sup> but where the proceedings took place before a justice or justices sitting elsewhere than in a petty-sessional courthouse<sup>9</sup>, the justice, or as the case may be, one of the justices may instead of signing an entry in the register, send to the justices' chief executive whose duty it is to keep the register a signed return of the proceedings containing the particulars required to be entered in the register, and the justices' chief executive must enter the return in the register<sup>10</sup>.

The register, or any document purporting to be an extract from it certified by the justices' chief executive as a true extract<sup>11</sup>, is admissible in any legal proceeding as evidence of the proceedings of the court entered in the register<sup>12</sup>. Every register must be open to inspection



during reasonable hours by any justice of the peace, or any person authorised in that behalf by a justice of the peace or the Lord Chancellor<sup>13</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 The register must be in the prescribed form, and entries must include, where relevant, such particulars as are provided for in that form: Magistrates' Courts Rules 1981, SI 1981/552, r 66(2). For the prescribed forms, see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, Sch 2, Form 148 (amended by SI 2001/615), Magistrates' Courts (Forms) Rules 1981, SI 1981/553, Sch 2 Form 150A (added by SI 1988/2132; and amended by SI 1994/1481), Magistrates' Courts (Forms) Rules 1981, SI 1981/553, Sch 2 Form 150B (added by SI 1994/1481), Magistrates' Courts (Forms) Rules 1981, SI 1981/553, Sch 2 Forms 151, 152, 153. See PARA 505 note 12 ante. The entry in the column of the register headed 'Nature of Offence' must show clearly, in case of conviction or dismissal, what is the offence of which the accused is convicted or, as the case may be, what is the offence charged in the information that is dismissed: Magistrates' Courts Rules 1981, SI 1981/552, r 66(9). An entry of a conviction in the register must state the date of the offence: r 66(10).

Particulars of any entry relating to a decision about bail and the reasons for it or the particulars of any certificate granted under the Bail Act 1976 s 5(6A) (as added and amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1173) may be made in a book separate from that in which the entry recording the decision itself is made, but that separate book is to be regarded as forming part of the register: Magistrates' Courts Rules 1981, SI 1981/552, r 66(3) (amended by SI 1983/523); and see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, Sch 2 Forms 149, 150, 150A (added by SI 1988/2132; and amended by SI 1994/1481), Magistrates' Courts (Forms) Rules 1981, SI 1981/553, Sch 2 Form 150B (added by SI 1994/1481), Magistrates' Courts (Forms) Rules 1981, SI 1981/553, Sch 2 Form 151A (added by SI 1983/524). As to bail see PARA 718 post; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1166 et seq. Similarly, such part of the register as relates to youth court proceedings must kept in a separate book (see the Magistrates' Courts (Children and Young Persons) Rules 1992, SI 1992/2071, r 25), and such part of the register as relates to proceedings under the Adoption Act 1976 must be kept in a separate book and must contain prescribed particulars, and the book must not contain particulars of any proceedings except adoption proceedings (see the Magistrates' Courts (Adoption) Rules 1984, SI 1984/611, r 32 (as amended), Sch 1 Form 14).

The justices chief executive for every magistrates' court who, as a fixed penalty clerk within the meaning of the Road Traffic Offenders Act 1988 s 69(4) (as amended) (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 1112), endorses a driving licence under s 57(3) (as amended) or s 57(4) (as amended) (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 1100) must register the particulars of the endorsement in a book separate from the register kept under the Magistrates' Courts Rules 1981, SI 1981/552, r 66 (as amended) but any such book is to be regarded as forming part of the register: r 66A (added by SI 1986/1332; and amended by SI 2001/610); Interpretation Act 1978 s 17(2)(a). The justices' chief executive for every magistrates' court must register receipt of a registration certificate issued under the Road Traffic Offenders Act 1988 ss 70, 71 (both as amended) (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARAS 1113, 1114) in a book separate from the register kept under the Magistrates' Courts Rules 1981, SI 1981/552, r 66 (as amended) but any such book is to be regarded as forming part of the register: r 66B (added by SI 1986/1332; and amended by SI 2001/610); Interpretation Act 1978 s 17(2)(a). As to the endorsement of driving licences see the Magistrates' Courts Rules 1981, SI 1981/552, r 32 (amended by SI 2001/610).

For a case where an entry in the register was held to be defective see *R v Huntingdon and Leightonstone Justices, ex p Simpkin and Coombes* (1959) 109 L Jo 155, DC.

3 As to these entries see further the Magistrates' Courts Rules 1981, SI 1981/552, r 66(9), (10), (11), (11A) (r 66(11) (as amended); and r 66(11A) as added); the text and notes 7-10 infra; and PARA 761 post.

4 le by the Magistrates' Courts Rules 1981, SI 1981/552 (as amended). Proceedings and things required by those rules to be entered include:

- 36 (1) the giving and withdrawal of consent together with the date of giving or withdrawing consent, where, by virtue of the Magistrates' Courts Act 1980 s 128(3A) (as added and amended) (see PARA 717 post), an accused gives his consent to the hearing and determination in his absence of any application for his remand on an adjournment of the case under s 5 (as amended) (see PARA 710 post), s 10(1) (see PARA 707 post) or s 18(4) (as amended) (see PARA 709 post) (Magistrates' Courts Rules 1981, SI 1981/552, r 66(3A), (3B) (added by SI 1983/523));
- 37 (2) an order under the Magistrates' Courts Act 1980 s 8(2) (as amended) (see PARA 677 post), removing restrictions on the reports of committal proceedings (Magistrates' Courts Rules 1981, SI 1981/552, r 5(2));

- 38 (3) the receipt of a statutory declaration which complies with the Magistrates' Courts Act 1980 s 14(1) (see the Magistrates' Courts Rules 1981, SI 1981/552, r 20 (as amended); and PARA 702 post);
- 39 (4) the receipt of a notice as to the discharge etc of a community order or an order for conditional discharge (see r 28 (amended by SI 1992/2072; SI 1998/2167; and SI 2001/610));
- 40 (5) failure to give effect to a suspended sentence (see the Magistrates' Courts Rules 1981, SI 1981/552, r 29(1); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 110 et seq), dealing with an offender in respect of such a sentence (see r 29(2) (as amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 110 et seq), and the discharge of a suspended sentence supervision order (see r 30(2) (amended by SI 2001/610); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 110 et seq);
- 41 (6) reasons for issuing a warrant of commitment or for fixing a term of imprisonment under the Magistrates' Courts Act 1980 s 77(2) (as amended) (see PARA 860 post) (see the Magistrates' Courts Rules 1981, SI 1981/552, r 65(1); and PARA 854 post);
- 42 (7) other particulars concerning the enforcement of fines (see r 65(2) (as amended); and PARA 854 post);
- 43 (8) the plea of the accused at the summary trial of an information (see r 66(4); and PARA 726 post);
- 44 (9) consent to summary trial (see r 66(5)); and PARA 659 post);
- 45 (10) where he is charged with an offence triable either way, whether the accused was present when the proceedings for determining the mode of trial were conducted (see r 66(6); and PARA 662 post);
- 46 (11) the decision as to the value involved in a case to which the Magistrates' Courts Act 1980 s 22 (as amended) (see PARA 661 post) applies (see the Magistrates' Courts Rules 1981, SI 1981/552, r 66(7); and PARA 661 post);
- 47 (12) where the court has power under Magistrates' Courts Act 1980 s 53(3) (see PARA 761 post) to make an order with the consent of the defendant without hearing the evidence, the defendant's consent to the making of an order (see the Magistrates' Courts Rules 1981, SI 1981/552, r 66(8); and PARA 761 post)
- 48 (13) where the court is required under the Powers of Criminal Courts (Sentencing) Act 2000 s 130(3) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 376) to give reasons for not making a compensation order, those reasons (see the Magistrates' Courts Rules 1981, SI 1981/552, r 66(10A) (added by SI 1988/2132); Powers of Criminal Courts (Sentencing) Act 2000 s 165, Sch 11 para 1(4));
- 49 (14) where a court passes a custodial sentence, a statement of whether it obtained and considered a pre-sentence report before passing sentence (see the Magistrates' Courts Rules 1981, SI 1981/552, r 66(10B) (added by SI 1992/2072);
- 50 (15) when an amendment to an order made under the Social Security Administration Act 1992 s 106(2) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 398) is made as a result of a transfer under s 107 (as amended) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 398) of the right to receive payments under that order, a written record of that amendment (see the Magistrates' Courts (Social Security Act 1986) (Transfer of Orders to Maintain and Enforcement of Maintenance Orders) Rules 1990, 1990/1909 (amended by SI 2001/615); and the Interpretation Act 1978 s 17(2)(a)).

5 As to the meaning of 'enactment' see PARA 505 note 16 ante. Proceedings and things so required to be entered in the register by any other enactment include the reasons why an offence is so serious that only a custodial sentence can be justified for it or where the offence is a violent or sexual offence only such a sentence would be adequate to protect the public from serious harm from the defendant: see the Powers of Criminal Courts (Sentencing) Act 2000 s 79(5).

6 Magistrates' Courts Rules 1981, SI 1981/552, r 66(1) (amended by SI 2001/610).

7 Any such certificates must be kept with and as part of the register: Magistrates' Courts Rules 1981, SI 1981/552, r 66(11A) (added by SI 1993/1183).

8 Magistrates' Courts Rules 1981, SI 1981/552, r 66(11) (amended by SI 1993/1183). In the case of an entry required by the Magistrates' Courts Rules 1981, SI 1981/552, r 66(3A), (3B) (as added) (see note 4 *supra*) where the consent or withdrawal of consent was not given or made (as the case may be) when the accused was present before the court, the entries must be signed or their accuracy certified by the justices' chief executive or justice who received the notification: r 66(11) (as so amended; and further amended by SI 1983/523; SI 2001/610).

9 Eg in an occasional courthouse: see PARA 585 *ante*. For the meaning of 'petty-sessional courthouse' see PARA 584 *ante*.

10 Magistrates' Courts Rules 1981, SI 1981/552, r 66(11) proviso (amended by SI 2001/610).

11 For the prescribed form of extract see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, Sch 2 Form 154 (amended by SI 2001/615).

12 Magistrates' Courts Rules 1981, SI 1981/552, r 68. As to proof of convictions see the Police and Criminal Evidence Act 1984 s 73 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1347. Justices may refer to and act upon an entry in their register recording a previous conviction: *Police Comr v Donovan* [1903] 1 KB 895, DC; *London School Board v Harvey* (1879) 4 QBD 451, DC.

13 Magistrates' Courts Rules 1981, SI 1981/552, r 66(12) (amended by SI 1992/709). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 *et seq*. The Secretary of State has requested that the police be given facilities to inspect registers in order to prepare annual returns of crime: Home Secretary's Circular dated 9 February 1893, 57 JP Jo 105, DC.

## UPDATE

### 624-630 Justices' Chief Executives

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. Part 1 (ss 1-6) brings the administration of the whole court system under the auspices of the Lord Chancellor, and consequentially the office of justices' chief executive is abolished. See further COURTS vol 10 (Reissue) PARA 502A.

### 628 Duty to keep the register

TEXT AND NOTES--SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to court records see Pt 6; and as to enforcement of fines see Pt 52.

NOTE 2--Prescribed forms, cited, revoked: SI 2003/1236.

NOTE 4--Head (15). SI 1990/1909 further amended: SI 2005/617.

NOTE 5--Powers of Criminal Courts (Sentencing) Act 2000 s 79(5) repealed: Criminal Justice Act 2003 Sch 37 Pt 7.

TEXT AND NOTES 7-10--SI 1981/552 r 66(11), (11A) revoked: SI 2003/1236.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(ii) Justices' Chief Executives/629. Default of a justices' chief executive.

### 629. Default of a justices' chief executive.

The Lord Chancellor<sup>1</sup> may, if he thinks fit, pay to any person any money due to that person which he has not received because of the default of a justices' chief executive or of any staff of a magistrates' courts committee<sup>2</sup>.

1 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 Justices of the Peace Act 1997 s 61 (amended by the Access to Justice Act 1999 s 88(4)). As to magistrates' courts committees see PARA 612 et seq ante.

## **UPDATE**

### **624-630 Justices' Chief Executives**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. Part 1 (ss 1-6) brings the administration of the whole court system under the auspices of the Lord Chancellor, and consequentially the office of justices' chief executive is abolished. See further COURTS vol 10 (Reissue) PARA 502A.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(ii) Justices' Chief Executives/630. Application of fines and fees.

#### **630. Application of fines and fees.**

In general, the justices' chief executive for a magistrates' court must pay to the Lord Chancellor all fines imposed by the magistrates' court, all sums payable by virtue of an order of the court and applicable as fines and all other sums received by the justices' chief executive by reason of his office<sup>1</sup>.

1 See the Justices of the Peace Act 1997 s 60 (as amended); and PARA 881 post.

## **UPDATE**

### **624-630 Justices' Chief Executives**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10. Part 1 (ss 1-6) brings the administration of the whole court system under the auspices of the Lord Chancellor, and consequentially the office of justices' chief executive is abolished. See further COURTS vol 10 (Reissue) PARA 502A.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(iii) Clerks to Justices/A. APPOINTMENT AND QUALIFICATION OF JUSTICES' CLERKS/631. Appointment and terms of employment.

#### **(iii) Clerks to Justices**

##### **A. APPOINTMENT AND QUALIFICATION OF JUSTICES' CLERKS**

#### **631. Appointment and terms of employment.**

Justices' clerks<sup>1</sup> are appointed by the magistrates' courts committee<sup>2</sup>. The committee may appoint more than one justices' clerk for any petty sessions area<sup>3</sup>, but the approval of the Lord Chancellor<sup>4</sup> is required for any decision to increase the number of justices' clerks for a petty sessions area or to have more than one justices' clerk in a new petty sessions area<sup>5</sup>.

A person may not be appointed as justices' clerk unless: (1) the committee has submitted to the Lord Chancellor, in accordance with regulations<sup>6</sup>, an application for approval of one or more persons offering themselves for the appointment<sup>7</sup>; (2) the Lord Chancellor has approved one or more of those persons<sup>8</sup>; and (3) the person appointed is a person so approved<sup>9</sup>. However, this does not apply in relation to a re-appointment where a person employed as a justices' clerk under a contract for a fixed term is re-appointed on the expiry of that term<sup>10</sup>. A magistrates' courts committee must consult the magistrates for any petty sessions area on the appointment of a justices' clerk for the area, except in the case of a re-appointment on the expiry of a fixed term<sup>11</sup>. Before approving any persons, the Lord Chancellor must consider any representations made to him by the magistrates for the petty sessions area concerned<sup>12</sup>.

Except as provided by the Justices of the Peace Act 1997, a justices' clerk is employed by the magistrates' courts committee on such terms as it may determine, and he holds and vacates office in accordance with the terms of his contract of service<sup>13</sup>. The approval of the Lord Chancellor is required for any determination by a magistrates' courts committee reducing the salary of a justices' clerk, unless the justices' clerk concerned consents to the reduction<sup>14</sup>.

The Lord Chancellor may provide courses of instruction for justices' clerks and staff of magistrates' courts committees<sup>15</sup>.

1 'Justices' clerk' means a clerk to the justices for a petty sessions area: Justices of the Peace Act 1997 s 72(1). As to petty sessions areas see PARAS 591-592 ante.

Any reference in the Magistrates' Courts Act 1980 to a clerk of any magistrates' court is to be construed as a reference to the clerk to the justices for the petty sessions area for which the court is acting, or was acting at the relevant time: s 141(1).

2 Justices of the Peace Act 1997 s 42(1). As to magistrates' courts committees see PARA 612 et seq ante. The appointment is not a judicial act which may be reviewed by judicial review: *R v Drummond, ex p Saunders* (1903) 67 JP 300, DC.

3 Justices of the Peace Act 1997 s 42(1). Where there is more than one clerk to the justices for any petty sessions area, anything that the Magistrates' Courts Act 1980 requires or authorises to be done by or to the clerk to the justices must or may be done by or to any of the clerks or by or to such of the clerks as the magistrates' courts committee having power over the appointment of clerks to justices for that area generally or in any particular case or cases may direct: s 141(2).

4 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

5 Justices of the Peace Act 1997 s 42(5)(a).

6 For these purposes, 'regulations' means regulations made by the Lord Chancellor by statutory instrument; and a statutory instrument containing, whether alone or with other provisions, regulations made by virtue of ibid s 42 is subject to annulment in pursuance of a resolution of either House of Parliament: s 42(9). For the procedure to be followed in submitting applications for approval of persons to be appointed under s 42, see the Justices' Chief Executives and Justices' Clerks (Appointment) Regulations 1999, SI 1999/2397.

7 Justices of the Peace Act 1997 s 42(2)(a). Where the Lord Chancellor declines to approve any person who is named in an application under s 42(2)(a), he must inform the magistrates' courts committee of the reasons for his decision: s 42(4).

8 Ibid s 42(2)(b).

9 Ibid s 42(2)(c).

10 Ibid s 42(3).

11 Ibid s 42(6)(a).

12 Ibid s 42(7)(a).

13 Ibid s 44(1). As to the effect of s 44(1) on persons appointed before 1 April 1995 as justices' clerks see s 73(1), Sch 4 para 17.

14 Ibid s 44(1A) (added by the Access to Justice Act 1999 s 83(3), Sch 12 paras 9, 12).

15 Justices of the Peace Act 1997 s 64(3).

## **UPDATE**

### **631-636 Appointment and Qualification of Justices' Clerks**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

#### **631 Appointment and terms of employment**

NOTE 1--Magistrates' Courts Act 1980 s 141 repealed: Courts Act 2003 Sch 8 para 244, Sch 10

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(iii) Clerks to Justices/A. APPOINTMENT AND QUALIFICATION OF JUSTICES' CLERKS/632. Qualifications for appointment as justices' clerk.

#### **632. Qualifications for appointment as justices' clerk.**

No person may be appointed a justices' clerk<sup>1</sup> unless either: (1) at the time of his appointment he has a five year magistrates' courts qualification<sup>2</sup>, or he is a barrister or solicitor and has served for not less than five years as assistant to a justices' clerk<sup>3</sup>; or (2) he then is or has previously been a justices' clerk<sup>4</sup>.

1 For the meaning of 'justices' clerk' see PARA 631 note 1 ante.

2 A person has a magistrates' courts qualification if he has a right of audience in relation to all proceedings in magistrates' courts: Courts and Legal Services Act 1990 s 71(3); Justices of the Peace Act 1997 s 43(a)(i). 'Right of audience' means the right to appear before and address a court including the right to call and examine witnesses: Courts and Legal Services Act 1990 s 119(1) (definition amended by the Access to Justice Act 1999 s 43, Sch 6 paras 4, 10(1), (2)). See further LEGAL PROFESSIONS vol 65 (2008) PARA 495 et seq; LEGAL PROFESSIONS vol 66 (2009) PARA 1109 et seq; COURTS.

3 Justices of the Peace Act 1997 s 43(a).

4 Ibid s 43(b).

## **UPDATE**

### **631-636 Appointment and Qualification of Justices' Clerks**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

#### **632 Qualifications for appointment as justices' clerk**

TEXT AND NOTES--Replaced by Courts Act 2003 s 27 (amended by Constitutional Reform Act 2005 Sch 4 para 326). A person cannot be designated as a justices' clerk unless he meets the requirements of the 2003 Act s 27(1), (2). The Lord Chancellor has a duty, after consulting the Lord Chief Justice, to assign justices' clerks to one or more local justice areas, and subject to s 27(4A)-(4C), may change an assignment so as to assign the justices' clerk to a different local justice area or to different local justice areas: s 27(3). The Lord Chancellor may change an assignment of a justices' clerk so that he is no longer assigned to a local justice area ('the relevant area') only if the conditions in s 27(4B) and (4C) are met: s 27(4A) (s 27(4A)-(4C) added by 2005 Act Sch 4 para 326(4)). Before changing the assignment, the Lord Chancellor must consult (1) the chairman of the lay justices assigned to the relevant area, or (2) if that is not possible or not practicable, the deputy chairman or such of the lay justices assigned to or acting in the relevant area as it appears to the Lord Chancellor appropriate to consult: 2003 Act s 27(4B). The Lord Chief Justice must agree to the change: s 27(4C). The Lord Chief Justice may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4)) to exercise his functions under the 2003 Act s 27: s 27(6A) (added by 2005 Act Sch 4 para 326(5)).

See further Constitutional Reform Act 2005 s 19, Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(iii) Clerks to Justices/A. APPOINTMENT AND QUALIFICATION OF JUSTICES' CLERKS/633. Disqualification for office.

### **633. Disqualification for office.**

A justices' clerk is part of the judicial process in the magistrates' court and the same test of apparent bias which applies to justices applies to him. In a case involving a justices' clerk, before apparent bias can be shown, it must be established that: (1) there was a real possibility of bias; and (2) by reason of his participating in the decision-making process, there was a real possibility that he would infect the views of the justices or give them the wrong legal advice<sup>1</sup>. A real possibility of bias, may arise, for instance, where he or his firm has a professional interest in the subject matter of the inquiry or matters arising out of it<sup>2</sup>; and, in such cases, his sitting with the justices or retiring with them when they consider their decision<sup>3</sup> may make it appear that justice is not being done, and the justices' decision will accordingly be quashed<sup>4</sup>. The mere fact that the clerk had in the past acted in connection with, or has personal knowledge of, matters before the court does not necessarily disqualify him from acting<sup>5</sup>.

The office of justices' clerk is incompatible with that of justice in the same county or division<sup>6</sup>.

<sup>1</sup> See *R v Gough* [1993] AC 646, [1993] 2 All ER 724, HL; *Porter v Magill* [2001] UKHL 67, [2002] 1 All ER 465, [2002] 2 WLR 37, HL; para 560 ante; and JUDICIAL REVIEW vol 61 (2010) PARA 631 et seq. See also *Locabail (UK) Ltd v Bayfield Properties Ltd* [2000] QB 451, [2000] 1 All ER 65, CA; *Re Medicaments and Related Classes of Goods (No 2)* [2001] 1 WLR 700, sub nom *Director General of Fair Trading v The Proprietary Association of Great Britain* [2000] All ER (D) 2425, CA; *Porter v Magill* [2001] UKHL 67, [2002] 1 All ER 465, HL, where the use of the terms 'real danger' and 'real likelihood' was also discussed. See also *R v Camborne Justices, ex p Pearce* [1955] 1 QB 41, [1954] 2 All ER 850, DC, where the fact that the justices' clerk was a member of the council on behalf of which the prosecution was conducted was insufficient to disqualify but was said to be undesirable.

<sup>2</sup> The practice of a justices' clerk being directly or indirectly employed or interested by himself or his partner or otherwise in the prosecution of anyone committed for trial by his justices has been discountenanced: see *R v Bushell* (1888) 52 JP 136 per Lord Coleridge CJ; and see the *Report of the Departmental Committee on Justices' Clerks* (Cmd 6507) (1944) PARAS 67, 68.

3 As to consultation by justices with their clerk and his retirement with them see PARA 757 post.

4 *R v Sussex Justices, ex p McCarthy* [1924] 1 KB 256, DC; *R v Essex Justices, ex p Perkins* [1927] 2 KB 475, DC; cf *R v Brakenridge* (1884) 48 JP 293, DC; *R v Gough* [1993] AC 646, [1993] 2 All ER 724, HL; *Porter v Magill* [2001] UKHL 67, [2002] 1 All ER 465, [2002] 2 WLR 37, HL; and see PARA 560 ante. See also Advice of Home Secretary, dated 25 June 1879 (43 JP Jo 695). As to disqualification of justices by interest or bias see PARA 555 et seq ante. In *R v Uxbridge Justices, ex p Burbridge* (1972) Times, 21 June, DC, it was held that an alleged remark of a clerk out of court which might have disclosed bias could not affect all the magistrates on a particular bench when the clerk did not act in the proceedings.

5 *R v Lower Munslow Justices, ex p Pudge* [1950] 2 All ER 756, DC; cf *R v Essex Justices, ex p Perkins* [1927] 2 KB 475, DC.

6 See PARA 511 ante.

## UPDATE

### 631-636 Appointment and Qualification of Justices' Clerks

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(iii) Clerks to Justices/A. APPOINTMENT AND QUALIFICATION OF JUSTICES' CLERKS/634. Removal of justices' clerk.

#### 634. Removal of justices' clerk.

A justices' clerk<sup>1</sup> is employed by a magistrates' courts committee<sup>2</sup> on such terms as it may determine, and he holds and vacates office in accordance with the terms of his contract of service<sup>3</sup>.

The approval of the Lord Chancellor<sup>4</sup> is required for the removal of the justices' clerk for a petty sessions area<sup>5</sup> where the magistrates<sup>6</sup> for the area do not consent to the removal<sup>7</sup>. A magistrates' courts committee must consult the magistrates for any petty sessions area on the removal of a justices' clerk for the area<sup>8</sup>. Before approving the removal of a justices' clerk, the Lord Chancellor must consider any representations made to him by the magistrates for the petty sessions area concerned, and must also consider any representations made to him by the clerk<sup>9</sup>.

1 For the meaning of 'justices' clerk' see PARA 631 note 1 ante.

2 As to magistrates' courts committees see PARA 612 et seq ante.

3 Justices of the Peace Act 1997 s 44(1).

4 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

5 As to petty sessions areas see PARAS 591-592 ante.

6 As to the meaning of 'magistrate' see PARA 501 ante.

7 Justices of the Peace Act 1997 s 42(5)(b). Where a person is employed as a justices' clerk under a contract for a fixed term, the expiry of that term without renewal is to be treated for the purposes of s 42(5)-(7) (see the text and notes 8-9 infra) as his removal as justices' clerk, unless he has consented to the failure to renew: s 42(8).

8 Ibid s 42(6)(b).



9 Ibid s 42(7)(b).

## **UPDATE**

### **631-636 Appointment and Qualification of Justices' Clerks**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(iii) Clerks to Justices/A. APPOINTMENT AND QUALIFICATION OF JUSTICES' CLERKS/635. Person acting as substitute clerk to the justices.

#### **635. Person acting as substitute clerk to the justices.**

Where a person who is not the justices' clerk<sup>1</sup>, or one of the justices' clerks<sup>2</sup> for a petty sessions area acts as clerk to the justices for that petty sessions area, he is to be treated as acting as deputy to the justices' clerk, and he must make a return to the justices' clerk of all matters done before the justices and all matters that the clerk to the justices is required to register or record<sup>3</sup>.

1 For the meaning of 'justices' clerk' see PARA 631 note 1 ante.

2 Where there are two or more justices' clerks for the petty sessions area, any reference in the Justices of the Peace Act 1997 s 47(1) to the justices' clerk is a reference to such one of them as may be designated for the purpose by the magistrates' courts committee: s 47(2). As to petty sessions areas see PARAS 591-592 ante. As to magistrates' courts committees see PARA 612 et seq ante.

3 Ibid s 47(1). This provision is expressed to be subject to any rules made under the Magistrates' Courts Act 1980 s 144 (as amended) (see PARA 588 ante): Justices of the Peace Act 1997 s 47(1).

## **UPDATE**

### **631-636 Appointment and Qualification of Justices' Clerks**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(iii) Clerks to Justices/A. APPOINTMENT AND QUALIFICATION OF JUSTICES' CLERKS/636. Justices' clerks' assistants.

#### **636. Justices' clerks' assistants.**

The power to make rules for regulating and prescribing the procedure and practice to be followed by justices' clerks<sup>1</sup> includes power to provide that, subject to any exceptions prescribed by the rules, persons must not be employed to assist a justices' clerk in any capacity so prescribed or must not be permitted to do on behalf of a justices' clerk any such acts as may be so prescribed, unless those persons are qualified to be appointed justices' clerk or have such other qualifications as may for any purpose be allowed by the rules or approved by the Lord Chancellor<sup>2</sup> in accordance with the rules<sup>3</sup>.

A person may not be employed as a clerk in court<sup>4</sup> unless he is either: (1) qualified, any age limits apart, to be appointed a justices' clerk<sup>5</sup>; or (2) qualified by being a barrister or solicitor of the Supreme Court or having passed the necessary examination for either of those professions<sup>6</sup>.

Nevertheless, an assistant<sup>7</sup> who is not so qualified may be employed as a clerk in court if: (a) he holds a valid training certificate<sup>8</sup> granted by a magistrates' courts committee<sup>9</sup> before 1 January 1999<sup>10</sup>; or (b) his employment as an assistant is registered by the Law Society as a training contract<sup>11</sup>. The Lord Chancellor may grant authority for specified persons to be employed as a clerk in court for such period not exceeding six months as may be specified if he is satisfied that the person is, in the circumstances, a suitable person to be employed as a clerk in court and that no other arrangements can reasonably be made for the hearing of proceedings before the court<sup>12</sup>.

1 The power under the Magistrates' Courts Act 1980 s 144 (as amended): see PARA 588 ante. For the meaning of 'justices' clerk' see PARA 631 note 1 ante.

2 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 Justices of the Peace Act 1997 s 44(3). This provision is expressed to be without prejudice to the general power to make rules under the Magistrates' Courts Act 1980 s 144(1) (as amended) (see PARA 588 ante): Justices of the Peace Act 1997 s 44(3). As to the rules made for these purposes see the Justices' Clerks (Qualification of Assistants) Rules 1979, SI 1979/570 (amended by SI 1980/1897; SI 1992/1834; SI 1998/3107; SI 1999/2184; SI 2001/2269); and the text and notes infra.

4 'Employed as a clerk in court' means employed to assist a justices' clerk by acting in his place as a clerk in court in proceedings before a justice or justices: Justices' Clerks (Qualifications of Assistants) Rules 1979, SI 1979/570, r 2(1). As to the treatment of two or more periods of employment as a clerk in court see r 2A (added by SI 1999/2814; and amended by SI 2001/2269).

5 Justices' Clerks (Qualification of Assistants) Rules 1979, SI 1979/570, r 3(a) (amended by SI 2001/2269). The reference in the text to being qualified to be appointed a justices' clerk is a reference to being qualified by virtue of the Justices of the Peace Act 1997 s 43 (see PARA 632 ante): see the Justices' Clerks (Qualification of Assistants) Rules 1979, SI 1979/570, r 3(a); and the Justices of the Peace Act 1997 s 73(1), Sch 4 para 1.

6 Justices' Clerks (Qualifications of Assistants) Rules 1979, SI 1979/570, rr 3(b), 4(1)(a). As to the qualification of barristers and solicitors see LEGAL PROFESSIONS.

For these purposes, a person is deemed to have passed an examination if he has been granted an exemption in relation to it by the appropriate examining body: r 2(2).

7 'Assistant' means a person employed to assist a justices' clerk: *ibid* r 2(1).

8 For the meaning of 'training certificate' see *ibid* rr 2(1), 5(2), Sch 3 (all now revoked): r 4A(2) (added by SI 1999/2814). The validity and duration of a training certificate granted before 1 January 1999 is to be determined as if the Justices' Clerks (Qualifications of Assistants) Rules 1979, SI 1979/570, r 5(2) and Sch 3 had continued in force: s 4A(2) (as so added).

9 'Magistrates' courts committee' includes the committee of magistrates for the inner London area: *ibid* r 2(1). As to magistrates' courts committees see PARA 612 et seq ante.

10 *Ibid* r 4A(1) (as added: see note 8 supra).

11 *Ibid* r 4A(1)(b) (as added: see note 8 supra). The reference in the text to registration of a training contract is a reference to registration under the Training Regulations 1990 reg 23 (see LEGAL PROFESSIONS vol 65 (2008) PARA 655): Justices' Clerks (Qualifications of Assistants) Rules 1979, SI 1979/570, r 4A(1)(b) (as so added). As to the Training Regulations 1990 see LEGAL PROFESSIONS vol 65 (2008) PARA 638.

12 See *ibid* r 6 (amended by SI 2001/2269); Transfer of Functions (Magistrates' Courts and Family Law) Order 1992, SI 1992/709, art 2.

## UPDATE

### 631-636 Appointment and Qualification of Justices' Clerks

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

### **636 Justices' clerks' assistants**

NOTES--SI 1979/570 (as amended) replaced: Assistants to Justices' Clerks Regulations 2006, SI 2006/3405 (see PARA 588).

TEXT AND NOTES 1-3--See now the Courts Act 2003 s 27(5)-(7). See further Constitutional Reform Act 2005 s 19, Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

TEXT AND NOTE 9--Definition omitted: SI 1979/570 r 2(1) (amended by SI 2005/617).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(iii) Clerks to Justices/B. DUTIES AND POWERS OF JUSTICES' CLERKS/637. General powers and duties of justices' clerks.

## ***B. DUTIES AND POWERS OF JUSTICES' CLERKS***

### **637. General powers and duties of justices' clerks.**

Rules made in accordance with the power to make rules for regulating and prescribing the procedure and practice to be followed in magistrates' courts and by justices' clerks<sup>1</sup> may make provision enabling things authorised to be done by, to or before a single justice of the peace to be done instead by, to or before a justices' clerk<sup>2</sup>. Such rules may also make provision enabling things authorised to be done by, to or before a justices' clerk<sup>3</sup> to be done instead by, to or before a person appointed by a magistrates' courts committee<sup>4</sup> to assist him<sup>5</sup>.

The functions of a justices' clerk include giving advice to the justices to whom he is clerk, at their request, about matters of law, including procedure and practice, on questions arising in connection with the discharge of their functions, including questions arising when the clerk is not personally attending on them<sup>6</sup>. The powers of a justices' clerk include, at any time when he thinks he should do so, bringing to the attention of those justices any point of law, including procedure and practice, that is or may be involved in any question so arising<sup>7</sup>.

1 The power under the Magistrates' Courts Act 1980 s 144 (as amended): see PARA 588 ante. For the meaning of 'justices' clerk' see PARA 631 note 1 ante.

2 Justices of the Peace Act 1997 s 45(1). The rules may make such provision except to the extent that any enactment passed after the Magistrates' Courts Act 1980 otherwise directs: Justices of the Peace Act 1997 s 45(1). As to the rules made for these purposes see the Justices' Clerks Rules 1999, SI 1999/2784; and PARA 638 post.

Any enactment, including any enactment contained in the Justices of the Peace Act 1997 or any rule of law which: (1) regulates the exercise of any jurisdiction or powers of justices of the peace; or (2) relates to things done in the exercise or purported exercise of any such jurisdiction or powers, applies in relation to the exercise or purported exercise of any such jurisdiction or powers by the clerk to any justices by virtue of s 45(1) as if he were one of those justices: s 45(3).

3 The whether by virtue of *ibid* s 45(1) (see the text and notes 1-2 *supra*) or otherwise: s 45(2).

4 As to magistrates' courts committees see PARA 612 *et seq* ante.

5 Justices of the Peace Act 1997 s 45(2).

6 Ibid s 45(4) (amended by the Access to Justice Act 1999 s 89(2)). For the purposes of the Justices of the Peace Act 1997 s 45(4), (5) (as amended), the functions of justices of the peace do not include functions as a judge of the Crown Court: s 45(6). The provisions of s 45(4), (5) (as amended): (1) apply in relation to any of the justices to whom the justices' clerk is clerk as they apply in relation to all of them; and (2) do not define or in any respect limit the powers and duties of a justices' clerk or the matters on which justices may obtain assistance from their clerk: s 45(7).

As to consultation by the justices with their clerk see *Practice Note* [2000] 4 All ER 895; and PARA 757 post.

7 Justices of the Peace Act 1997 s 45(5) (amended by the Access to Justice Act 1999 s 89(2)). See also note 6 *supra*.

## UPDATE

### **637-651 General powers and duties of justices' clerks ... Powers of the inspectors**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

### **637 General powers and duties of justices' clerks**

TEXT AND NOTES--See now Courts Act 2003 s 28 (amended by Constitutional Reform Act 2005 Sch 4 para 327).

NOTE 2--SI 1999/2784 replaced by Justices' Clerks Rules 2005, SI 2005/545 (amended by SI 2005/2796, SI 2006/2493).

NOTES 6, 7--Advice by a court clerk to a lay justice of a Scottish criminal court is not incompatible with a defendant's right to trial by an independent and impartial tribunal under the European Convention on Human Rights art 6(1): *Clark (Procurator Fiscal, Kirkcaldy) v Kelly* [2003] UKPC D1, [2003] 1 All ER 1106.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(iii) Clerks to Justices/B. DUTIES AND POWERS OF JUSTICES' CLERKS/638. Judicial powers of justices' clerks.

### **638. Judicial powers of justices' clerks.**

The following things authorised to be done by, to or before a single justice of the peace for a petty sessions area<sup>1</sup> may be done by, to or before the justices' clerk<sup>2</sup> for that area<sup>3</sup>:

- 86 (1) the laying of an information or the making of a complaint, other than an information or complaint substantiated on oath<sup>4</sup>;
- 87 (2) the issue of any summons, including a witness summons<sup>5</sup>;
- 88 (3) the issue of a warrant of arrest, whether or not indorsed for bail, for failure to surrender to the court, where there is no objection on behalf of the accused<sup>6</sup>;
- 89 (4) the marking of an information as withdrawn<sup>7</sup>;
- 90 (5) the dismissing of an information, or the discharging of an accused in respect of an information, where no evidence is offered by the prosecution<sup>8</sup>;
- 91 (6) the making of an order for the payment of defence costs out of central funds<sup>9</sup>;
- 92 (7) the adjournment of the hearing of a complaint if the parties to the complaint consent to the complaint being adjourned<sup>10</sup>;

- 93 (8) the extending of bail on the same conditions as those, if any, previously imposed, or, with the consent of the prosecutor and the accused, the imposing or varying of conditions of bail<sup>11</sup>;
- 94 (9) the further adjournment of criminal proceedings with the consent of the prosecutor and the accused, if but only if: (a) the accused, not having been remanded on the previous adjournment, is not remanded on the further adjournment; or (b) the accused, having been remanded on bail on the previous adjournment, is remanded on bail on the like terms and conditions, or, with the consent of the prosecutor and the accused, on other terms and conditions<sup>12</sup>;
- 95 (10) the further adjournment of criminal proceedings, where there has been no objection by the prosecutor, where the accused, having been remanded on bail on the previous adjournment, is remanded on bail on the like terms and conditions in his absence<sup>13</sup>;
- 96 (11) the remand of the accused on bail in his absence at the time of further adjourning the proceedings in pursuance of head (10) above<sup>14</sup>;
- 97 (12) the appointment of a later time at which a person, who has been granted bail under the Police and Criminal Evidence Act 1984 subject to a duty to appear before a magistrates' court, is to appear, and the enlargement of any sureties for that person at that time<sup>15</sup>, provided there is no objection by the prosecutor<sup>16</sup>;
- 98 (13) where a person has been granted police bail to appear at a magistrates' court, the appointment of an earlier time for his appearance<sup>17</sup>;
- 99 (14) the committal of person for trial on bail<sup>18</sup> where, having been remanded on bail on the previous adjournment, he is released on bail on the like terms and conditions<sup>19</sup>;
- 100 (15) where a case is to be tried on indictment, the granting of a representation order<sup>20</sup> for purposes of the proceedings in the Crown Court<sup>21</sup>;
- 101 (16) the asking of an accused whether he pleads guilty or not guilty to a charge, after having stated to him the substance of the information laid against him<sup>22</sup>;
- 102 (17) the fixing or setting aside of a date, time and place for the trial of an information<sup>23</sup>;
- 103 (18) the making of a direction to release certain persons on bail in accordance with the rules<sup>24</sup> relating to the procedure for appeals against grant of bail<sup>25</sup>;
- 104 (19) the giving, variation or revocation of directions for the conduct of a criminal trial, including directions as to the timetable for proceedings, the attendance of the parties, the service of documents (including summaries of any legal arguments relied on by the parties), and the manner in which evidence is to be given<sup>26</sup>;
- 105 (20) with the consent of the parties, the giving, variation or revocation of orders for separate or joint trials in the case of two or more accused or two or more informations<sup>27</sup>;
- 106 (21) the extension, with the consent of the accused, of an overall time limit under the provisions<sup>28</sup> relating to the setting of time limits in relation to preliminary stages of criminal proceedings<sup>29</sup>;
- 107 (22) the request of a pre-sentence report following a plea of guilty<sup>30</sup>;
- 108 (23) the request of a medical report and, for that purpose, the remand of an accused on bail on the same conditions as those, if any, previously imposed, or, with the consent of the prosecutor and the accused, on other conditions<sup>31</sup>;
- 109 (24) the remitting of an offender to another court for sentence<sup>32</sup>;
- 110 (25) where the accused has been convicted of an offence, the making of an order for him to produce his driving licence<sup>33</sup>;
- 111 (26) the giving of consent for another magistrates' court to deal with an offender for an earlier offence in respect of which, after the offender had attained the age of 17 years, a court had made a community rehabilitation order<sup>34</sup> or an order for conditional discharge, where the justices' clerk is the clerk of the court which made the order, or in the case of a community rehabilitation order, of that court or the supervising court<sup>35</sup>;

- 112 (27) the amending<sup>36</sup> of a community rehabilitation order<sup>37</sup> or community punishment order<sup>38</sup> by substituting for the petty sessions area specified in the order the other area in which the offender proposes to reside or is residing<sup>39</sup>;
- 113 (28) the varying<sup>40</sup> of an attendance centre order by varying the day or hour specified in the order for the offender's first attendance at the relevant attendance centre, or substituting for the relevant attendance centre an attendance centre which the justices' clerk is satisfied is reasonably accessible to the offender, having regard to his age, the means of access available to him and any other circumstances<sup>41</sup>;
- 114 (29) the signing of a certificate given to the Crown Court<sup>42</sup> as to non-compliance with a community order<sup>43</sup>;
- 115 (30) the acceptance<sup>44</sup> of service of certain<sup>45</sup> statutory declarations<sup>46</sup>;
- 116 (31) the issue of a warrant of distress<sup>47</sup>;
- 117 (32) the allowing of further time for payment of a sum enforceable by a magistrates' court<sup>48</sup>;
- 118 (33) the varying of the number of instalments payable, the amount of any instalment payable and the date on which any instalment becomes payable where a magistrates' court has ordered that a sum adjudged to be paid must be paid by instalments<sup>49</sup>;
- 119 (34) the making of a transfer of fine order, that is to say, an order making payment by a person of a sum adjudged to be paid by a conviction enforceable in the petty sessions area in which he is residing<sup>50</sup>;
- 120 (35) the making of an order before an inquiry into the means of a person<sup>51</sup> that that person must furnish<sup>52</sup> to the court a statement of his means<sup>53</sup>;
- 121 (36) the fixing<sup>54</sup> of a later day in substitution for a day previously fixed for the appearance of an offender to enable an inquiry into his means to be made<sup>55</sup> or to enable a hearing<sup>56</sup> to be held<sup>57</sup>;
- 122 (37) the making or withdrawal of an application to the Secretary of State<sup>58</sup> for the deductions to be made<sup>59</sup> from an offender's income support<sup>60</sup>;
- 123 (38) the doing of such other things as are required or permitted to be done by a magistrates' court under the regulations relating to fines and the deductions to be made from an offender's income support<sup>61</sup>;
- 124 (39) the determination<sup>62</sup> that a complaint for the revocation, discharge, revival, alteration, variation or enforcement of a magistrates' court maintenance order be dealt with by a magistrates' court acting for another petty sessions area<sup>63</sup>;
- 125 (40) the transfer of proceedings in accordance with any order made by the Lord Chancellor<sup>64</sup> under the Children Act 1989<sup>65</sup>;
- 126 (41) the appointment<sup>66</sup> of an officer of the Children and Family Court Advisory and Support Service<sup>67</sup> or solicitor for a child<sup>68</sup>;
- 127 (42) the giving, variation or revocation of directions in accordance with the Family Proceedings Courts (Matrimonial Proceedings etc) Rules 1991<sup>69</sup> or the Family Proceedings Courts (Children Act 1989) Rules 1991<sup>70</sup>;
- 128 (43) the making<sup>71</sup> of a section 8 order<sup>72</sup> or an interim order<sup>73</sup>;
- 129 (44) the issuing<sup>74</sup> of a witness summons<sup>75</sup> in relevant proceedings<sup>76</sup> within the meaning of the Children Act 1989<sup>77</sup>;
- 130 (45) the request<sup>78</sup> of a welfare report<sup>79</sup>;
- 131 (46) the issuing<sup>80</sup> of a witness summons<sup>81</sup> in proceedings under the Domestic Proceedings and Magistrates' Courts Act 1978<sup>82</sup>.

The things specified in heads (1) to (39) above, being things authorised to be done by, to or before a justices' clerk, may be done instead by, to or before a person appointed by a magistrates' courts committee to assist him, provided that that person has been specifically authorised by the justices' clerk for that purpose<sup>83</sup>. The things specified in heads (40) to (46) above, being things to be authorised to be done by, to or before a justices' clerk, may be done

instead by, to or before a person employed as a clerk in court<sup>84</sup> where that person is appointed by the magistrates' courts committee to assist him and where that person has been specifically authorised by the justices' clerk for that purpose<sup>85</sup>.

1 As to petty sessions areas see PARAS 591-592 ante.

2 For the meaning of 'justices' clerk' see PARA 631 note 1 ante.

3 Justices' Clerks Rules 1999, SI 1999/2784, r 2. See also *R v Worthing Justices, ex p Norvell* [1981] 1 WLR 413, DC.

Where any form prescribed by rules made or having effect as if made under the Magistrates' Courts Act 1980 s 144 (as amended) (see PARA 588 ante), contains provision for signature by a justice of the peace only, the form has effect as if it contained provision in the alternative for signature by the clerk of a magistrates' court (Magistrates' Courts Rules 1981, SI 1981/552, r 109(1)), but this does not apply to any form of warrant, other than a warrant of commitment or of distress, or to any form prescribed in the Magistrates' Courts (Forms) Rules 1981, SI 1981/553 (as amended) (Magistrates' Courts Rules 1981, SI 1981/552, r 109(2)). See PARA 505 note 12 ante. As to warrants of distress see DISTRESS vol 13 (2007 Reissue) PARA 1134 et seq. As to warrants of commitment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1162.

4 Justices' Clerks Rules 1999, SI 1999/2784, r 2, Schedule para 1. As to the laying of an information or the making of a complaint see PARA 681 et seq post.

5 Ibid Schedule para 2. See further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 923; and *R v Clerk to the Bradford Justices, ex p Sykes and Shoesmith* (1999) 163 JP 224, DC. As to summonses generally see PARA 687 et seq ante.

6 Justices' Clerks Rules 1999, SI 1999/2784, Schedule para 3.

7 Ibid Schedule para 4.

8 Ibid Schedule para 5. See PARA 730 post.

9 Ibid Schedule para 6. As to awards out of central funds and payments of defence costs see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2059.

10 Ibid Schedule para 7. As to the adjournment of hearings see PARA 707 et seq post.

11 Ibid Schedule para 8. As to bail see PARA 718 post; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1165 et seq.

12 Ibid Schedule para 9. As to adjournment and remand generally see PARAS 707-724 post.

13 Ibid Schedule para 10(1).

14 Ibid Schedule para 10(2).

15 Ie in accordance with the Magistrates' Courts Act 1980 s 43(1) (as substituted and amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1177.

16 Justices' Clerks Rules 1999, SI 1999/2784, Schedule para 11(1). As to bail granted by a magistrates' court see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1177 et seq. As to bail with sureties see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1172.

17 Ibid Schedule para 11(2).

18 Ie in accordance with the Magistrates' Courts Act 1980 s 6(2), (3)(b) (s 6(2) as substituted): see PARA 676 post.

19 Justices' Clerks Rules 1999, SI 1999/2784, Schedule para 12.

20 Ie under the Legal Aid Act 1988 Pt V (ss 19-26) (repealed): see LEGAL AID vol 65 (2008) PARA 2.

21 Justices' Clerks Rules 1999, SI 1999/2784, Schedule para 13.

22 Ibid Schedule para 14. As to the substance of informations see PARA 726 post.

- 23 Ibid Schedule para 15.
- 24 Ie the Magistrates' Courts Rules 1981, SI 1981/552, r 93A(7) or (8) (as added and amended).
- 25 Justices' Clerks Rules 1999, SI 1999/2784, Schedule para 16.
- 26 Ibid Schedule para 17.
- 27 Ibid Schedule para 18.
- 28 Ie under the Prosecution of Offences Act 1985 s 22 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1152.
- 29 Justices' Clerks Rules 1999, SI 1999/2784, Schedule para 19. As to the time limits in relation to preliminary stages of criminal proceedings see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1152 et seq.
- 30 Ibid Schedule para 20. The justices' clerk is not authorised to give an indication of the seriousness of an offence for the purposes of a pre-sentence report: see the Crime and Disorder Act 1998 s 49(3)(a); and PARA 540 ante. As to pre-sentence reports see PARA 791 post; SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 617.
- 31 Ibid Schedule para 21.
- 32 Ibid Schedule para 22. As to the power of justices to remit to another court for sentence see PARA 775 post.
- 33 Ibid Schedule para 23.
- 34 Community rehabilitation orders were formerly known as probation orders: see the Powers of Criminal Courts (Sentencing) Act 2000 s 41 (as amended); and the Criminal Justice and Court Services Act 2000 s 43(4). As to community rehabilitation orders see PARA 794 post; and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1370; SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 195.
- 35 Justices' Clerks Rules 1999, SI 1999/2784, Schedule para 24.
- 36 Ie in accordance with the Powers of Criminal Courts (Sentencing) Act 2000 ss 43, 48 (both as amended), Sch 3 para 18: see the Powers of Criminal Courts (Sentencing) Act 2000 s 165, Sch 11 para 1(4).
- 37 See note 34 supra.
- 38 Community punishment orders were formerly known as community service orders: see the Powers of Criminal Courts (Sentencing) Act 2000 s 46 (as amended); and the Criminal Justice and Court Services Act 2000 s 44(4).
- 39 Justices' Clerks Rules 1999, SI 1999/2784, Schedule para 25. As to community rehabilitation orders and community punishment orders generally see PARAS 794-796 post; and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1370 et seq; SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 195 et seq.
- 40 Ie in accordance with the Powers of Criminal Courts (Sentencing) Act 2000 s 61, Sch 5 para 5(1), (2) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 268): see s 165, Sch 11 para 1(4).
- 41 Justices' Clerks Rules 1999, SI 1999/2784, Schedule para 26. As to the amendment of attendance centre orders see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1361.
- 42 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 4(5) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 234): see Sch 11 para 1(4).
- 43 Justices' Clerks Rules 1999, SI 1999/2784, Schedule para 27. As to community orders see PARAS 789-791, 794-799; and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARAS 1339-1396; SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 168-201, 231 et seq.
- 44 Ie under the Magistrates' Courts Act 1980 s 14(3) (see PARA 702 post): see s 154, Sch 8 para 5.
- 45 Ie under ibid s 14(1) (as amended): see PARA 702 post.
- 46 Justices' Clerks Rules 1999, SI 1999/2784, Schedule para 28.



47 Ibid Schedule para 29.

48 Ibid Schedule para 30. For the meaning of 'magistrates' court' see PARA 583 ante. As to allowing further time for payment see PARA 853 post.

49 Ibid Schedule para 31. As to payment by instalments see PARA 853 post.

50 Ibid Schedule para 32. As to the transfer of fines see PARA 856 post.

51 Ie under the Magistrates' Courts Act 1980 s 82 (as amended; prospectively further amended) (see PARAS 854, 862 post): see s 154, Sch 8 para 5.

52 Ie under the Magistrates' Courts Act 1980 s 84 (as amended): see PARA 864 post.

53 Justices' Clerks Rules 1999, SI 1999/2784, Schedule para 33.

54 Ie under the Magistrates' Courts Act 1980 s 86(3) (see PARA 853 post): see s 154, Sch 8 para 5.

55 See note 51 supra.

56 Ie required by the Magistrates' Courts Act 1980 s 82(5) (as amended and prospectively amended) (see PARA 862 post): see s 154, Sch 8 para 5.

57 Justices' Clerks Rules 1999, SI 1999/2784, Schedule para 34.

58 As to the Secretary of State see PARA 530 note 8 ante.

59 Ie pursuant to the Fines (Deductions from Income Support) Regulations 1992, SI 1992/2182 (as amended): see PARA 877 post.

60 Justices' Clerks Rules 1999, SI 1999/2784, Schedule para 35. As to the recovery of fines by deductions from income support see PARA 877 post.

61 Ibid Schedule para 36. The regulations referred to in the text are the Fines (Deductions from Income Support) Regulations 1992, SI 1992/2182 (as amended) (see PARA 877 post): see the Justices' Clerks Rules 1999, SI 1999/2784, Schedule para 36.

62 Ie in accordance with the Magistrates' Courts Rules 1981, SI 1981/552, r 41 (amended by SI 1989/384; SI 2001/610) (see PARA 823 post) or r 59 (amended by SI 1989/384; SI 2001/610) (see PARA 829 post).

63 Justices' Clerks Rules 1999, SI 1999/2784, Schedule para 37, which refers to affiliation orders. Affiliation proceedings were abolished by the Family Law Reform Act 1987 s 17.

64 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

65 Justices' Clerks Rules 1999, SI 1999/2784, Schedule para 38. The reference in the text to the transfer of proceedings is a reference to the transfer of proceedings under the Children Act 1989 s 92, Sch 11 Pt I (as amended): see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 208.

66 Ie under the Children Act 1989 s 41 (as amended): see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARAS 311, 321.

67 As to officers of the Children and Family Court Advisory and Support Service (CAFCASS) see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 230.

68 See the Children Act 1989 s 41(1) (amended by the Criminal Justice and Court Services Act 2000 Commencement No 4 Order, SI 2001/919, art 2(f)(ii)); Justices' Clerks Rules 1999, SI 1999/2784, Schedule para 39. See further CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARAS 311, 321.

69 Ie the Family Proceedings Courts (Matrimonial Proceedings etc) Rules 1991, SI 1991/1991, r 6 (as amended): see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 895.

70 Justices' Clerks Rules 1999, SI 1999/2784, Schedule para 40. The reference in the text to the 1991 Rules, is a reference to the Family Proceedings Courts (Children Act 1989) Rules 1991, SI 1991/1395, r 14 (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 207): Justices' Clerks Rules 1999, SI 1999/2784, Schedule para 40.

71 le in accordance with the Family Proceedings Courts (Children Act 1989) Rules 1991, SI 1991/1395, r 28 (as amended): see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARAS 266, 288.

72 le under the Children Act 1989 s 11(3): see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 266.

73 Justices' Clerks Rules 1999, SI 1999/2784, Schedule para 41. The reference in the text to the power to make interim orders is to the power under the Children Act 1989 s 38(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 288): Justices' Clerks Rules 1999, SI 1999/2784, Schedule para 41.

74 le by virtue of the Family Proceedings Courts (Children Act 1989) Rules 1991, SI 1991/1395 r 33: see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 207.

75 le under the under the Magistrates' Courts Act 1980 s 97 (as amended): see PARA 734 post.

76 'Relevant proceedings' means any application made, or proceedings brought, under the provisions of: (1) the Children Act 1989; (2) the provisions of any statutory instrument made under that Act; or (3) any amendment made by that Act in any other enactment, and any part of such proceedings: s 93(1), (3).

77 Justices' Clerks Rules 1999, SI 1999/2784, Schedule para 42.

78 le under the Children Act 1989 s 7 (as amended): see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARAS 311, 317.

79 Justices' Clerks Rules 1999, SI 1999/2784, Schedule para 43. As to welfare reports see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 311 et seq.

80 le by virtue of the Family Proceedings Courts (Matrimonial Proceedings etc) Rules 1991, SI 1991/1991, r 16(2) (as amended).

81 See note 75 supra.

82 Justices' Clerks Rules 1999, SI 1999/2784, Schedule para 44. As to proceedings under the Domestic Proceedings and Magistrates' Courts Act 1978 see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 553 et seq.

83 Justices' Clerks Rules 1999, SI 1999/2784, r 3(1). Any reference in the Schedule to a justices' clerk is to be taken to include such a person: r 3(1). The powers authorised to be exercised by a justices' clerk at an early administrative hearing under the Crime and Disorder Act 1998 s 50 (as amended) may be exercised instead by a person appointed by a magistrates' courts committee to assist him, provided that that person has been specifically authorised by the justices' clerk for that purpose: Justices' Clerks Rules 1999, SI 1999/2784, r 3(2). Any authorisation by the justices' clerk under r 3(1) or (2) must be recorded in writing at the time the authority is given or as soon as is practicable thereafter: r 3(3).

84 For the meaning of 'employed as a clerk in court' see PARA 636 note 4 ante; definition applied by the Family Proceedings Courts (Children Act 1989) Rules 1991, SI 1991/1395, r 32(1); and the Family Proceedings Courts (Matrimonial Proceedings etc) Rules 1991, SI 1991/1991, r 15(1).

85 Family Proceedings Courts (Children Act 1989) Rules 1991, SI 1991/1395, r 32(2); the Family Proceedings Courts (Matrimonial Proceedings etc) Rules 1991, SI 1991/1991, r 15(2). Any such authorisation by the justices' clerk must be recorded in writing at the time the authority is given or as soon as practicable thereafter: see the Family Proceedings Courts (Children Act 1989) Rules 1991, SI 1991/1395, r 32(3); the Family Proceedings Courts (Matrimonial Proceedings etc) Rules 1991, SI 1991/1991, r 15(3) (amended by SI 2001/615).

## UPDATE

### **637-651 General powers and duties of justices' clerks ... Powers of the inspectors**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

### **638 Judicial powers of justices' clerks**

NOTES 3-83--SI 1999/2784 replaced by Justices' Clerks Rules 2005, SI 2005/545 (amended by SI 2005/2796, SI 2006/2493).

NOTE 3--In SI 1981/552 r 109, where a signature is required on a form or warrant other than an arrest, remand or commitment warrant, an electronic signature incorporated into the document satisfies this requirement: r 109(3) (added by SI 2003/1236). For the meaning of 'electronic signature', see PARA 688 TEXT AND NOTE 8.

TEXT AND NOTE 8--Also under head (3) the discharging of an accused in respect of an information: SI 2005/545 Schedule para 5.

TEXT AND NOTES 34, 35--Head (26) now refers to the age of 18 and references to a community rehabilitation order are omitted: SI 2005/545 Schedule para 24.

NOTE 36--Now in accordance with the Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 15: SI 2005/545 Schedule para 25.

TEXT AND NOTES 37-39--Head (27) refers also to a community punishment order, and to the local justice area instead of the petty sessions area: SI 2005/545 Schedule para 25.

NOTE 40--Now in accordance with the Powers of Criminal Courts (Sentencing) Act 2000 Sch 5 para 5(1): SI 2005/545 Schedule para 26.

NOTE 42--Now under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 4(6): SI 2005/545 Schedule para 27.

TEXT AND NOTE 50--Now head (34) the making of a transfer of fine order under the Magistrates' Courts Act 1980 s 89: SI 2005/545 Schedule para 32.

TEXT AND NOTES 62, 63--Head (39) revoked and not replaced: SI 2005/545.

NOTE 65--SI 1999/2784 Schedule para 38 now SI 2005/545 Schedule para 37.

TEXT AND NOTE 67--Reference to an officer of the Children and Family Court Advisory and Support Service is now to a children's guardian: SI 2005/545 Schedule para 38.

NOTE 68--SI 1999/2784 Schedule para 39 now SI 2005/545 Schedule para 38.

NOTE 70--SI 1999/2784 Schedule para 40 now SI 2005/545 Schedule para 39.

NOTE 73--SI 1999/2784 Schedule para 41 now SI 2005/545 Schedule para 40.

NOTE 77--SI 1999/2784 Schedule para 42 now SI 2005/545 Schedule para 41.

NOTE 79--SI 1999/2784 Schedule para 43 now SI 2005/545 Schedule para 42.

TEXT AND NOTE 82--SI 1999/2784 Schedule para 44 now SI 2005/545 Schedule para 43. After 'Domestic Proceedings and Magistrates' Courts Act 1978' read 'or the Civil Partnership Act 2004 Sch 6': SI 2005/545 Schedule para 43 (amended by SI 2005/2796).

Now heads (47) the determination that a complaint for the revocation, discharge, revival, alteration, variation or enforcement of a magistrates' court maintenance order be dealt with by a magistrates' court acting for another local justice area in accordance with the provisions of the Magistrates' Courts Rules 1981, SI 1981/552, r 41 or 59 (SI 2005/545 Schedule para 44 (para 44 and PARAS 45-71 added by SI 2005/2796); (48) the carrying out of functions in proceedings under the Adoption and Children Act 2002 (see SI 2005/545 Schedule paras 45-71 (as so added)).

TEXT AND NOTE 83--Now refers to things specified in heads (1) to (38) and heads (47), (48): SI 2005/545 r 3(1) (amended by SI 2005/2796).

TEXT AND NOTE 85--Reference to magistrates' court committee is now to the Lord Chancellor: SI 1991/1991 r 15(2) (amended by SI 2005/617).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(iii) Clerks to Justices/B. DUTIES AND POWERS OF JUSTICES' CLERKS/639. Independence of justices' clerks and staff exercising legal functions.

### **639. Independence of justices' clerks and staff exercising legal functions.**

When exercising any legal function<sup>1</sup> a justices' clerk<sup>2</sup> is not subject to the direction of the justices' chief executive<sup>3</sup> or any other person or body, and a member of the staff of a magistrates' courts committee<sup>4</sup> is not subject to the direction of any person or body other than a justices' clerk<sup>5</sup>.

1 'Legal function' means any function exercisable by one or more justices of the peace or a functions specified in the Justices of the Peace Act 1997 s 45(4) or (5) (as amended) (see PARA 637 ante): s 48(2) (s 48 substituted by the Access to Justice Act 1999 s 89(1)).

2 For the meaning of 'justices' clerk' see PARA 631 note 1 ante.

3 As to the justices' chief executive see PARA 624 et seq ante.

4 As to magistrates' courts committees see PARA 612 et seq ante.

5 Justices of the Peace Act 1997 s 48(1) (as substituted: see note 1 supra).

#### **UPDATE**

### **637-651 General powers and duties of justices' clerks ... Powers of the inspectors**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

### **639 Independence of justices' clerks and staff exercising legal functions**

TEXT AND NOTES--Replaced by Courts Act 2003 s 29.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(iii) Clerks to Justices/B. DUTIES AND POWERS OF JUSTICES' CLERKS/640. Default of a justices' clerk.

### **640. Default of a justices' clerk.**

The Lord Chancellor<sup>1</sup> may, if he thinks fit, pay to any person any money due to that person which he has not received because of the default of a justices' clerk or of any staff of a magistrates' courts committee<sup>2</sup>.

1 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 Justices of the Peace Act 1997 s 61. As to magistrates' courts committees see PARA 612 et seq ante.

#### **UPDATE**

### **637-651 General powers and duties of justices' clerks ... Powers of the inspectors**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(iii) Clerks to Justices/C. COMPENSATION FOR LOSS OF OFFICE/641. Compensation for loss of office.

### **C. COMPENSATION FOR LOSS OF OFFICE**

#### **641. Compensation for loss of office.**

Regulations provide for the payment of compensation to justices' clerks and those employed to assist<sup>1</sup> them who suffered loss of office or employment or loss or diminution of emoluments attributable to changes made under the Justices of the Peace Act 1949 or the Justices of the Peace Act 1997<sup>2</sup>.

<sup>1</sup> A person is employed in assisting the holder of the office of justices' clerk in the performance of the duties of that office for the purposes of the Justices of the Peace Act 1949 (Compensation) Regulations 1978, SI 1978/1682 (as amended) only if his employment is wholly or predominantly devoted to providing such assistance: *Berkshire and Oxfordshire Magistrates' Courts Committee v Gannon* [2000] ICR 1003, Times 10 May.

<sup>2</sup> See the Justices of the Peace Act 1949 (Compensation) Regulations 1954, SI 1954/1262 (amended by SI 1957/1681; SI 1965/283); the Justices of the Peace Act 1949 (Compensation) Regulations 1965, SI 1965/283 (amended by SI 1971/1119; SI 1978/1682); the Justices of the Peace Act 1949 (Compensation) Regulations 1978, SI 1978/1682 (amended by SI 1995/41; and amended by virtue of SI 1992/709), all of which were made under the Justices of the Peace Act 1949 (now repealed).

The Justices of the Peace Act 1949 (Compensation) Regulations 1954, SI 1954/1262 (as amended), the Justices of the Peace Act 1949 (Compensation) Regulations 1965, SI 1965/283 (as amended) and the Justices of the Peace Act 1949 (Compensation) Regulations 1978, SI 1978/1682 (as amended) were made under the Justices of the Peace Act 1949 s 42 (now repealed). However, the regulations continue to have effect and may be revoked or varied notwithstanding the repeal by the Justices of the Peace Act 1979 of the provision under which they were made: Justices of the Peace Act 1997 s 73(1), Sch 4 para 20(1).

Provision has also been made for compensation to be paid to those who suffered loss of office or employment or loss or diminution of emoluments attributable to operation of the Justices of the Peace Act 1968 s 1 (as amended), if they were persons who held office or employment in respect of which they were paid a salary by the corporation of the City of London, by the South Staffordshire Stipendiary Justice Commissioners or by the Staffordshire Potteries Stipendiary Justice Commissioners or were employed to assist such persons: see the Justices of the Peace Act 1968 (Compensation) Regulations 1969, SI 1969/398, which were made under the Justices of the Peace Act 1968 Sch 3 para 16 (now repealed). These regulations continue to have effect and may be revoked or varied notwithstanding the repeal by the Justices of the Peace Act 1979 of the provision under which they were made: Justices of the Peace Act 1997 s 73(1), Sch 4 para 20(1).

#### **UPDATE**

#### **637-651 General powers and duties of justices' clerks ... Powers of the inspectors**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

#### **641 Compensation for loss of office**

NOTE 2--SI 1954/1262 further amended: SI 2006/680. SI 1965/283 further amended: SI 2005/617, SI 2006/680.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(iv) Administrative and Financial Arrangements/A. ARRANGEMENTS BY LOCAL AUTHORITIES IN RELATION TO MAGISTRATES' COURTS COMMITTEES FOR AREAS OUTSIDE GREATER LONDON/642. Duties of local authorities.

#### **(iv) Administrative and Financial Arrangements**

#### ***A. ARRANGEMENTS BY LOCAL AUTHORITIES IN RELATION TO MAGISTRATES' COURTS COMMITTEES FOR AREAS OUTSIDE GREATER LONDON***

##### **642. Duties of local authorities.**

The paying authority or authorities<sup>1</sup> in relation to any magistrates' courts committee for an area outside Greater London must provide the petty sessional courthouses<sup>2</sup> and other accommodation, and the goods and services, proper for the performance of the functions of<sup>3</sup>: (1) the magistrates<sup>4</sup> for the magistrates' courts committee area<sup>5</sup>; (2) the magistrates' courts committee<sup>6</sup>; (3) any other committee of magistrates for that area<sup>7</sup>; (4) or the justices' clerks for any part of the magistrates' courts committee area<sup>8</sup>. However, this does not require the paying authority or authorities to provide goods or services which regulations<sup>9</sup> require the magistrates' courts committee to obtain otherwise than from that authority or any of those authorities, or to provide any current item<sup>10</sup> or class of items if the magistrates' courts committee has notified the authority or authorities that it intends to obtain that item or class of items otherwise from that authority or any of those authorities<sup>11</sup>. Where there is one paying authority in relation to a magistrates' courts committee for an area outside Greater London, that authority must pay the expenses<sup>12</sup> of the committee<sup>13</sup>, and where there are two or more paying authorities, each of those authorities must pay a proper proportion of those expenses<sup>14</sup>. Two or more paying authorities may arrange for accommodation, goods or services provided for these purposes by one of them to be used also as if it were provided for those purposes by the other or each of the others<sup>15</sup>.

After consultation with the paying authority or authorities:

- 132 (a) the petty-sessional courthouses and other accommodation, goods and services to be so provided<sup>16</sup>;
- 133 (b) the salary to be paid to a justices' clerk or justices' chief executive and to staff of a magistrates' courts committee for an area outside Greater London<sup>17</sup>;
- 134 (c) and the nature and amount of the expenses which such a magistrates' courts committee may incur in the discharge of any functions or may authorise to be incurred<sup>18</sup>,

are such as may from time to time be determined by the magistrates' courts committee<sup>19</sup>. Any paying authority which is aggrieved by such a determination may, within one month from the receipt by the authority of written notice of the determination, appeal to the Lord Chancellor, whose decision is binding upon the magistrates' courts committee and any authority concerned<sup>20</sup>.

1 For these purposes, 'paying authority', in relation to a magistrates' courts committee for an area outside Greater London means any responsible authority whose area comprises all or part of the area to which the committee relates: Justices of the Peace Act 1997 s 55(10) (definition amended by the Access to Justice Act 1999 s 83(3), Sch 12 paras 9, 16(1), (4) Sch 15); Justices of the Peace Act 1997 s 56(5). 'Responsible authority'

means any council of a county, a county borough or a unitary district: s 55(10) (definition amended by the Access to Justice Act 1999 s 106, Sch 15 Pt V); Justices of the Peace Act 1997 ss 57(8), 58(2). For the meaning of 'unitary district' see PARA 564 note 9 ante. As to areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARAS 24 et seq, 37 et seq. As to magistrates' courts committees for an area outside Greater London see PARAS 613-615 ante.

2 For the meaning of 'petty-sessional courthouse' see PARA 584 ante. Licensed premises may not be used as a petty-sessional courthouse: see PARA 584 ante.

3 Justices of the Peace Act 1997 s 55(1) (amended by the Access to Justice Act 1999 s 83(3), Sch 12 paras 9, 16(1), (2)).

Nothing in the Justices of the Peace Act 1997 s 55(1), (4) or (5) (as amended) requires any paying authority to incur any expenditure or make any payment which would: (1) cause the net cost to it in any year of the matters mentioned in s 57(1) (as amended) (see PARA 643 post) to exceed the amount which, in relation to that authority and that year, is for the time being determined by the Lord Chancellor under s 57(3)(b); or (2) cause its capital expenditure in any year in pursuance of functions under Pt VI (ss 55-61) (as amended) to exceed the amount which, in relation to that authority and that year, is for the time being determined by the Lord Chancellor under s 57(4)(b): s 55(7)(a), (b). In determining any such net cost as is mentioned in head (1) supra, any such capital expenditure as is mentioned in head (2) supra is to be disregarded: s 55(7). However, s 55(7) does not apply in relation to any expenditure or payments whose cost is, or is to be, met by payments under the Vehicles (Crime) Act 2001 s 38 (unified power for Secretary of State to fund speed cameras etc) (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 758): Justices of the Peace Act 1997 s 55(7A) (added by the Vehicles (Crime) Act 2001 s 43, Schedule para 7). 'Capital expenditure' means expenditure for capital purposes (construed in accordance with the Local Government and Housing Act 1989 s 40) (see LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 562): Justices of the Peace Act 1997 s 72(1). The Lord Chancellor may make regulations providing that any expenditure of responsible authorities in pursuance of their functions under Pt VI (as amended) which is of a description specified in the regulations is taken not to be capital expenditure for the purposes of s 55(3) or (7): see PARA 643 post. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

Any accommodation provided under any enactment for any justice, justices' clerk or justices' chief executive may be outside the area for which the justices act and, in the case of a petty-sessional courthouse, is to be treated as being in that area for the purposes of the jurisdiction of the justices when acting in the courthouse: s 68A (added by the Access to Justice Act 1999 s 83(3), Sch 12 paras 9, 19). As to justices' clerks see PARA 631 et seq ante. As to the justices' chief executive see PARA 624 et seq ante.

4 As to the meaning of 'magistrate' see PARA 501 ante.

5 Justices of the Peace Act 1997 s 55(1)(a).

6 Ibid s 55(1)(b).

7 Ibid s 55(1)(c).

8 Ibid s 55(1)(d).

9 The regulations made by virtue of ibid s 59E(2) (as added): see PARA 645 post.

10 For these purposes, 'current item' means any goods or services which are of such a kind that expenditure incurred by a paying authority on providing them would not be capital expenditure: ibid s 55(3). See also note 3 supra.

11 Ibid s 55(2) (amended by the Access to Justice Act 1999 s 84(1), (3)).

12 For the purposes of the Justices of the Peace Act 1997 s 55(4), (5) the expenses of a magistrates' courts committee are taken to include:

- 51 (1) expenses incurred by it in obtaining goods and services which are proper for the purposes mentioned in s 55(1) (as amended) (see the text and notes 1-3 supra) but which by virtue of s 55(2) (as amended) (see the text and notes 9-11 supra) the paying authority or authorities are not required to provide (Justices of the Peace Act 1997 s 55(6)(a));
- 52 (2) the sums payable under Pt IV (ss 40-50) (as amended) on account of a person's salary or expenses as justices' chief executive or as justices' clerk for any part of the magistrates' courts committee area, the remuneration of any staff employed by the committee and the remuneration of any court security officers employed (whether by the committee or a paying authority) under the Criminal Justice Act 1991 s 76(2)(a) (see PARA 619 ante) in relation to petty sessions areas within the magistrates' courts committee area together with: (a) secondary Class

I contributions payable in respect of any such person, staff or officers under the Social Security Contributions and Benefits Act 1992 Pt I (ss 1-19A) (as amended) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 31 et seq); and (b) contributions equivalent premiums so payable under the Pension Schemes Act 1993 Pt III Ch III (ss 50-68) (as amended) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARAS 918-925) (Justices of the Peace Act 1997 s 55(6)(b));

- 53 (3) the sums payable under any contract entered into (whether by any such magistrates' courts committee or a paying authority) under the Criminal Justice Act 1991 s 76(2)(b) (see PARA 619 ante) (Justices of the Peace Act 1997 s 55(6)(c)); and
- 54 (4) so far as they are not otherwise provided for, all other costs incurred, with the general or special authority of the magistrates' courts committee, by the justices for the magistrates' courts committee area (s 55(6)(d)).

As to petty sessions areas see PARAS 591-592 ante. As to the justices' chief executive see PARA 624 et seq ante.

13 Ibid s 55(4) (amended by the Access to Justice Act 1999 s 83(3), Sch 12 paras 9, 16(1), (3)). See note 3 supra.

14 Justices of the Peace Act 1997 s 55(5) (amended by the Access to Justice Act 1999 s 83(3), Sch 12 paras 9, 16(1), (3)). See note 3 supra. Where the expenses of a magistrates' courts committee for an area outside Greater London (including any sums which, by virtue of the Justices of the Peace Act 1997 s 55(6) (as amended) (see note 12 supra), are to be taken to be such expenses) fall to be borne by more than one paying authority, any question as to the manner in which they are to be borne by the authorities concerned is to be determined by agreement between those authorities and the magistrates' courts committee concerned or, in default of such agreement, is to be determined by the Lord Chancellor: s 56(2) (amended by the Access to Justice Act 1999 s 83(3), Sch 12 paras 9, 17(1), (3)).

15 Justices of the Peace Act 1997 s 55(9).

16 Ibid s 56(1)(a). As to the provision of courthouses and other accommodation, goods and services under s 55 (as amended) see the text and notes 1-15 supra.

17 Ibid s 56(1)(b) (amended by the Access to Justice Act 1999 s 83(3), Sch 12 paras 9, 17(1), (2)).

18 Justices of the Peace Act 1997 s 56(1)(c) (amended by the Access to Justice Act 1999 s 83(3), Sch 12 paras 9, 17(1), (2)).

19 Justices of the Peace Act 1997 s 56(1). This provision is expressed to be subject to the provisions of s 56 (as amended): s 56(1). Section 56(1) does not apply to the extent that regulations made by virtue of s 59E (as added) (see PARA 645 post) have the effect of precluding a determination as to any of the matters mentioned in that provision: s 56(1A) (added by the Access to Justice Act 1999 s 84(1), (4)).

20 Justices of the Peace Act 1997 s 56(3).

## UPDATE

### **637-651 General powers and duties of justices' clerks ... Powers of the inspectors**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(iv) Administrative and Financial Arrangements/A. ARRANGEMENTS BY LOCAL AUTHORITIES IN RELATION TO MAGISTRATES' COURTS COMMITTEES FOR AREAS OUTSIDE GREATER LONDON/643. Grants by the Lord Chancellor.

### **643. Grants by the Lord Chancellor.**



The Lord Chancellor<sup>1</sup> may pay to responsible authorities<sup>2</sup> grants towards the net cost to them in any year of: (1) their functions under Part VI<sup>3</sup> of the Justices of the Peace Act 1997<sup>4</sup>; (2) their functions under any regulations made or having effect as if made, under the Superannuation Act 1972<sup>5</sup> with respect to court staff<sup>6</sup>; (3) their functions under any regulations having effect by virtue of transitional provisions<sup>7</sup>; and (4) making payments under the provisions relating to travelling, subsistence and financial loss allowances<sup>8</sup> and the indemnification<sup>9</sup> of justices and justices' clerks<sup>10</sup>. The amount of any such grant must not exceed 80 per cent of whichever of the following is the less: (a) that net cost<sup>11</sup>; and (b) the amount which, in relation to the authority and that year, is for the time being determined by the Lord Chancellor<sup>12</sup>. The Lord Chancellor, with the concurrence of the Treasury<sup>13</sup>, may by statutory instrument make regulations as to the manner in which income and expenditure of responsible authorities are to be taken into account in determining the net cost to them in any year of the matters mentioned in heads (1) to (4) above<sup>14</sup>. He may also direct that, in determining the net cost to a responsible authority in any year of such matters, there must be taken into account or disregarded, to such extent as may be specified in the direction, such items as may be so specified<sup>15</sup>.

The Lord Chancellor may also pay to the responsible authorities grants towards their capital expenditure in any year in pursuance of their functions under Part VI of the Justices of the Peace Act 1997<sup>16</sup>. The amount of any such grant must not exceed 80 per cent of whichever of the following is the less: (i) that capital expenditure<sup>17</sup>; and (ii) the amount which, in relation to the authority and that year, is for the time being determined by the Lord Chancellor<sup>18</sup>. The Lord Chancellor, with the concurrence of the Treasury, may by statutory instrument make regulations providing that any expenditure of responsible authorities in pursuance of their functions under Part VI of the Justices of the Peace Act 1997 which is of a description specified in the regulations is taken not to be capital expenditure for certain<sup>19</sup> purposes<sup>20</sup>. The Lord Chancellor, with the concurrence of the Treasury, may also by statutory instrument make regulations as to the manner in which expenditure of responsible authorities is to be taken into account in determining their capital expenditure in any year in pursuance of their functions under Part VI of the Justices of the Peace Act 1997<sup>21</sup>. He may also direct that, in determining the capital expenditure of such an authority in any year in pursuance of such functions, there is to be taken into account or disregarded, to such extent as may be specified in the direction, such items as may be so specified<sup>22</sup>.

Grants under these provisions must be paid at such times, in such manner and subject to such conditions as the Lord Chancellor may with the approval of the Treasury determine<sup>23</sup>.

1 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 For the meaning of 'responsible authority' see PARA 642 note 1 ante.

3 Ie the Justices of the Peace Act 1997 Pt VI (ss 55-61) (as amended).

4 Ibid s 57(1)(a).

5 Ie under the Superannuation Act 1972 ss 7, 24 (as amended).

6 Justices of the Peace Act 1997 s 57(1)(b). For these purposes, 'court staff' means justices' chief executives, justices' clerks and staff of magistrates' courts committees: s 57(8). As to justices' clerks see PARA 631 et seq ante. As to the justices' chief executive see PARA 624 et seq ante. As to magistrates' courts committees see PARA 612 et seq ante.

7 Ibid s 57(1)(c). The transitional provisions referred to in the text are the provisions of s 73(1), Sch 4 para 20(1)(a) or (2): s 57(1)(c).

8 Ie under ibid s 10 (as amended): see PARA 564 ante.

9 Ie under ibid s 54 (as amended): see PARA 571 ante.

10 Ibid s 57(1). In determining any such net cost, there is to be disregarded any such capital expenditure as is mentioned in s 57(2) (as amended) (see the text and note 16 infra) and any expenditure which is, or is to be, met by payments under the Vehicles (Crime) Act 2001 s 38 (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 758): Justices of the Peace Act 1997 s 57(1) (amended by the Vehicles (Crime) Act 2001 s 43, Schedule para 8(1), (2)). For the meaning of 'capital expenditure' see PARA 642 note 3 ante.

11 Justices of the Peace Act 1997 s 57(3)(a).

12 Ibid s 57(3)(b).

13 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

14 Justices of the Peace Act 1997 s 57(5)(a). At the date at which this volume states the law, no such regulations had been made. For the purposes of s 57 (as amended) any question as to that net cost is, subject to the regulations, to be determined by the Lord Chancellor: s 57(5).

15 Ibid s 57(6)(a).

16 Ibid s 57(2). In determining any such expenditure for these purposes, there is to be disregarded any capital expenditure which is, or is to be, met by payments under the Vehicles (Crime) Act 2001 s 38 (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 758): Justices of the Peace Act 1997 s 57(2) (amended by the Vehicles (Crime) Act 2001 s 43, Schedule para 8(1), (3)).

Where on or after 1 April 1995 a responsible authority appropriates any land owned by it to magistrates' courts purposes, the authority is taken for the purposes of the Justices of the Peace Act 1997 s 57(2) (as amended) or the Vehicles (Crime) Act 2001 s 38 (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 758) to incur, in the year in which the appropriation is made, capital expenditure in pursuance of its functions under the Justices of the Peace Act 1997 Pt VI (as amended) of an amount equal to the open market value of the land at the time of the appropriation: s 58(1) (amended by the Vehicles (Crime) Act 2001 s 43, Schedule para 9). 'Magistrates' courts purposes' means the purposes of being provided under the Justices of the Peace Act 1997 s 55(1) (see PARA 642 ante) as a petty sessional courthouse or other accommodation: s 58(2). For the meaning of 'petty sessional courthouse' see PARA 584 ante.

17 Ibid s 57(4)(a).

18 Ibid s 57(4)(b).

19 Ie for the purposes of ibid s 55(3), (7) (see PARA 642 ante) or s 57 (as amended).

20 Ibid s 57(4A) (s 57(4A), (4B) added by the Local Government (Contracts) Act 1997 s 10). A statutory instrument containing (whether alone or with other provisions) such regulations is subject to annulment in pursuance of a resolution of either House of Parliament: Justices of the Peace Act 1997 s 57(4B) (as so added). As to the regulations made under s 57(4A) (as added) see the Magistrates' Courts (Grants) Regulations 1998, SI 1998/2165.

21 Justices of the Peace Act 1997 s 57(5)(b). At the date at which this volume states the law, no such regulations had been made. For the purposes of s 57 (as amended) any question as to that capital expenditure is, subject to the regulations, to be determined by the Lord Chancellor: s 57(5).

22 Ibid s 57(6)(b).

23 Ibid s 57(7).

## UPDATE

### **637-651 General powers and duties of justices' clerks ... Powers of the inspectors**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

## ARRANGEMENTS BY LOCAL AUTHORITIES IN RELATION TO MAGISTRATES' COURTS COMMITTEES FOR AREAS OUTSIDE GREATER LONDON/644. Regulations as to accounts and audit.

### **644. Regulations as to accounts and audit.**

The Lord Chancellor<sup>1</sup> may by regulations made by statutory instrument require magistrates' courts committees for areas outside Greater London<sup>2</sup> to keep prescribed accounts and prescribed records in relation to those accounts and to cause any such accounts to be audited in accordance with the regulations<sup>3</sup>.

1 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 As to magistrates' courts committees for areas outside Greater London see PARAS 613-615 ante.

3 Justices of the Peace Act 1997 s 59(1) (amended by the Access to Justice Act 1999 s 83(3), Sch 12 paras 9, 18). 'Prescribed' means prescribed by the regulations: Justices of the Peace Act 1997 s 59(2). A statutory instrument containing (whether alone or with other provisions) regulations made by virtue of s 59 (as amended) is subject to annulment in pursuance of a resolution of either House of Parliament: s 59(2). At the date at which this volume states the law no such regulations had been made.

### **UPDATE**

### **637-651 General powers and duties of justices' clerks ... Powers of the inspectors**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(iv) Administrative and Financial Arrangements/A. ARRANGEMENTS BY LOCAL AUTHORITIES IN RELATION TO MAGISTRATES' COURTS COMMITTEES FOR AREAS OUTSIDE GREATER LONDON/645. Standard goods and services.

### **645. Standard goods and services.**

In relation to any magistrates' courts committee for an area outside Greater London<sup>1</sup>, the Lord Chancellor<sup>2</sup> may by statutory instrument make regulations requiring every magistrates' courts committee, or every specified magistrates' courts committee, to obtain specified goods or services, or goods or services of a specified description, for the performance of the functions of:

- 135 (1) the magistrates for the magistrates' courts committee area<sup>3</sup>;
- 136 (2) the magistrates' courts committee<sup>4</sup>;
- 137 (3) any other committee of the magistrates for that area<sup>5</sup>; or
- 138 (4) the justices' clerks<sup>6</sup> for any part of the magistrates' courts committee area<sup>7</sup>,

if he considers that it would be in the interests of the efficient and effective administration of magistrates' courts generally for them to do so<sup>8</sup>. Such regulations may include provision requiring magistrates' courts committees to obtain the specified goods or services, or goods or services of the specified description<sup>9</sup>: (a) from a specified person or person of a specified description<sup>10</sup>; (b) at or by a specified time<sup>11</sup>; or (c) both from such a person and at or by such a time<sup>12</sup>.

- 1 As to magistrates' courts committees for areas outside Greater London see PARAS 613-615 ante.
- 2 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.
- 3 See the Justices of the Peace Act 1997 ss 55(1)(a), 59E(1) (s 59E added by the Access to Justice Act 1999 s 84(1), (2)). As to the meaning of 'magistrate' see PARA 501 ante.
- 4 See the Justices of the Peace Act 1997 ss 55(1)(b), 59E(1) (as added: see note 3 supra).
- 5 See *ibid* ss 55(1)(c), 59E(1) (as added: see note 3 supra).
- 6 As to justices' clerks see PARA 631 et seq ante.
- 7 See the Justices of the Peace Act 1997 ss 55(1)(d), 59E(1) (as added: see note 3 supra).
- 8 See *ibid* s 59E(1) (as added: see note 3 supra). A statutory instrument containing (whether alone or with other provisions) regulations made by virtue of s 59E (as added) is subject to annulment in pursuance of a resolution of either House of Parliament: s 59E(3) (as so added). At the date at which this volume states the law no such regulations had been made.
- 9 *Ibid* s 59E(2) (as added: see note 3 supra).
- 10 *Ibid* s 59E(2)(a) (as added: see note 3 supra).
- 11 *Ibid* s 59E(2)(b) (as added: see note 3 supra).
- 12 *Ibid* s 59E(2)(c) (as added: see note 3 supra).

## UPDATE

### **637-651 General powers and duties of justices' clerks ... Powers of the inspectors**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(iv) Administrative and Financial Arrangements/B. ARRANGEMENTS BY THE GREATER LONDON MAGISTRATES' COURTS AUTHORITY/646. Duties and powers.

## ***B. ARRANGEMENTS BY THE GREATER LONDON MAGISTRATES' COURTS AUTHORITY***

### **646. Duties and powers.**

The Greater London Magistrates' Courts Authority<sup>1</sup> must provide such petty sessional courthouses<sup>2</sup> and other accommodation, and such goods and services, as it may determine proper for the performance of the Authority's functions and those of the magistrates<sup>3</sup> for Greater London, any committee of the magistrates for Greater London and the justices' clerks<sup>4</sup> for any part of Greater London<sup>5</sup>. The Authority may do anything which is calculated to facilitate, or is conducive or incidental to, the exercise of such functions, but it may not borrow money except in so far as authorised by any other enactment to do so<sup>6</sup>.

The Authority must consult each London local authority<sup>7</sup> before making any such determination in relation to the provision of petty-sessional courthouses, accommodation, goods and services<sup>8</sup> or any determination as to: (1) the salary to be paid to a justices' clerk or justices' chief executive and to staff of the Authority<sup>9</sup>; or (2) the nature and amount of the expenses which

the Authority may incur in the discharge of its functions or may authorise to be incurred<sup>10</sup>. Any London local authority which is aggrieved by such a determination may, within one month from the receipt by the London local authority of written notice of the determination, appeal to the Lord Chancellor, whose decision is binding upon the Authority and the London local authority concerned<sup>11</sup>.

1 As to the Greater London Magistrates' Courts Authority see PARA 616 ante.

2 For the meaning of 'petty-sessional courthouse' see PARA 584 ante. Licensed premises may not be used as a petty-sessional courthouse: see PARA 584 ante.

3 As to the meaning of 'magistrate' see PARA 501 ante.

4 As to justices' clerks see PARA 631 et seq ante.

5 Justices of the Peace Act 1997 s 59A(1) (s 59A added by the Access to Justice Act 1999 s 83(2)). Any accommodation provided under any enactment for any justice, justices' clerk or justices' chief executive may be outside the area for which the justices act and, in the case of a petty-sessional courthouse, is to be treated as being in that area for the purposes of the jurisdiction of the justices when acting in the courthouse: s 68A (added by the Access to Justice Act 1999 s 83(3), Sch 12 paras 9, 19). As to the justices' chief executive see PARA 624 et seq ante. As to transitional provisions relating to the Greater London Magistrates' Courts Authority see PARA 616 note 1 ante.

6 Justices of the Peace Act 1997 s 59A(2) (as added: see note 5 supra).

7 'London local authority' means the council of any London borough or the Common Council of the City of London: *ibid* ss 59B(8), 59C(3) (ss 59B, 59C both added by the Access to Justice Act 1999 s 83(2)). As to the London borough councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 30. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 51-55.

8 Is a determination under the Justices of the Peace Act 1997 s 59A(1) (as added): see the text and notes 1-5 supra.

9 *Ibid* s 59C(1)(a) (as added: see note 7 supra).

10 *Ibid* s 59C(1)(b) (as added: see note 7 supra).

11 *Ibid* s 59C(2) (as added: see note 7 supra).

## UPDATE

### **637-651 General powers and duties of justices' clerks ... Powers of the inspectors**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(iv) Administrative and Financial Arrangements/B. ARRANGEMENTS BY THE GREATER LONDON MAGISTRATES' COURTS AUTHORITY/647. Grants and funding.

### **647. Grants and funding.**

The Lord Chancellor<sup>1</sup> may pay grants to the Greater London Magistrates' Courts Authority<sup>2</sup> in respect of the Authority's expenditure<sup>3</sup>, and such grants must be paid at such times, in such manner and subject to such conditions as the Lord Chancellor may with the concurrence of the Treasury<sup>4</sup> determine<sup>5</sup>.

Each London local authority<sup>6</sup> must pay to the Authority such amount in respect of: (1) any kind of the Authority's expenditure in any year<sup>7</sup>; or (2) if less, such amount as may, in relation to that kind of expenditure and that year, be for the time being determined by the Lord Chancellor<sup>8</sup>, as may be determined in accordance with regulations made by the Lord Chancellor by statutory instrument<sup>9</sup>. The Lord Chancellor may by regulations made by statutory instrument make provision as to the making of such payments, including provision<sup>10</sup>: (a) as to whether payments are to be made by instalments or otherwise<sup>11</sup>; (b) as to the time when payments are to be made<sup>12</sup>; (c) conferring a right to interest on anything unpaid<sup>13</sup>; and (d) permitting a London local authority to anticipate a payment when making calculations of budget requirements<sup>14</sup> (originally or by way of substitute)<sup>15</sup>.

The Lord Chancellor may with the consent of the Treasury make provision by regulations made by statutory instrument as to how any kind of the Authority's expenditure is to be determined<sup>16</sup>. Subject to any such regulations, the Lord Chancellor may direct that in determining any kind of the Authority's expenditure there is to be taken into account or disregarded, to such extent as may be specified in the direction, such items as may be so specified<sup>17</sup>.

1 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 As to the Greater London Magistrates' Courts Authority see PARA 616 ante.

3 Justices of the Peace Act 1997 s 59B(1) (s 59B added by the Access to Justice Act 1999 s 83(2)). References in the Justices of the Peace Act 1997 s 59B (as added) to the Authority's expenditure do not include expenditure which is, or is to be, met by payments under the Vehicles (Crime) Act 2001 s 38 (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 758): Justices of the Peace Act 1997 s 59B(7A) (s 59B as so added: s 59B(7A) added by the Vehicles (Crime) Act 2001 s 43, Schedule para 10).

4 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

5 Justices of the Peace Act 1997 s 59B(2) (as added: see note 3 supra).

6 For the meaning of 'London local authority' see PARA 646 note 7 ante.

7 Justices of the Peace Act 1997 s 59B(3)(a) (as added: see note 3 supra).

8 Ibid s 59B(3)(b) (as added: see note 3 supra).

9 Ibid s 59B(3) (as added: see note 3 supra).

10 Ibid s 59B(4) (as added: see note 3 supra). A statutory instrument containing regulations made by virtue of s 59B (as added) is subject to annulment in pursuance of a resolution of either House of Parliament: s 59B(7). As to the regulations made under s 59B(3), (4) (as added) see the Greater London Magistrates' Courts Authority (Funding) Regulations 2001, SI 2001/47.

11 Justices of the Peace Act 1997 s 59B(4)(a) (as added: see note 3 supra).

12 Ibid s 59B(4)(b) (as added: see note 3 supra).

13 Ibid s 59B(4)(c) (as added: see note 3 supra).

14 In accordance with the Local Government Finance Act 1992 s 32 (as amended): see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 262 et seq.

15 Justices of the Peace Act 1997 s 59B(4)(b) (as added: see note 3 supra).

16 Ibid s 59B(5) (as added: see note 3 supra). A statutory instrument containing regulations made by virtue of s 59B is subject to annulment in pursuance of a resolution of either House of Parliament: s 59B(7). At the date at which this volume states the law no such regulations had been made.

17 Ibid s 59B(6) (as added: see note 3 supra).

## UPDATE

## **637-651 General powers and duties of justices' clerks ... Powers of the inspectors**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(iv) Administrative and Financial Arrangements/B. ARRANGEMENTS BY THE GREATER LONDON MAGISTRATES' COURTS AUTHORITY/648. Accounts and audit.

### **648. Accounts and audit.**

The Greater London Magistrates' Courts Authority<sup>1</sup> must keep a fund to be known as 'the GLMCA fund'<sup>2</sup>. All the Authority's receipts must be paid into the GLMCA fund and all the Authority's expenditure must be paid out of it<sup>3</sup>. The Authority must keep accounts of payments made into or out of the GLMCA fund and make arrangements for the proper administration of its financial affairs<sup>4</sup>.

The Lord Chancellor may by regulations made by statutory instrument make provision applying the provisions of the Local Government Finance Act 1988 relating to financial administration<sup>5</sup> and the provisions of the Audit Commission Act 1998 relating to accounts and audit of public bodies<sup>6</sup>, to the Authority, with or without modifications and exceptions<sup>7</sup>.

1 As to the Greater London Magistrates' Courts Authority see PARA 616 ante.

2 Justices of the Peace Act 1997 s 59D(1) (s 59D added by the Access to Justice Act 1999 s 83(2)).

3 Justices of the Peace Act 1997 s 59D(2) (as added: see note 2 supra).

4 Ibid s 59D(3) (as added: see note 2 supra).

5 Ie the Local Government Finance Act 1988 Pt VIII (ss 111-116) (as amended): see LOCAL GOVERNMENT vol 29(1) (Reissue) PARAS 624-627.

6 Ie the Audit Commission Act 1998 Pt II (ss 2-32) (as amended): see LOCAL GOVERNMENT vol 69 (2009) PARA 744 et seq.

7 Justices of the Peace Act 1997 s 59D(4) (as added: see note 2 supra). A statutory instrument containing regulations made by virtue of s 59D (as added) is subject to annulment in pursuance of a resolution of either House of Parliament: s 59D(5) (as so added). As to the regulations made under s 59D(4) (as added) see the Greater London Magistrates' Courts Authority (Financial Administration) Regulations 2000, SI 2000/2810 and the Greater London Magistrates' Courts Authority (Accounts and Audit) Regulations 2001, SI 2001/734.

### **UPDATE**

## **637-651 General powers and duties of justices' clerks ... Powers of the inspectors**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(iv) Administrative and Financial Arrangements/B.

ARRANGEMENTS BY THE GREATER LONDON MAGISTRATES' COURTS AUTHORITY/649. Standard goods and services.

#### **649. Standard goods and services.**

The Lord Chancellor<sup>1</sup> may by statutory instrument make regulations requiring the Greater London Magistrates' Courts Authority<sup>2</sup> to obtain specified goods or services, or goods or services of a specified description, for the performance of the Authority's functions and those of the magistrates<sup>3</sup> for Greater London, any committee of the magistrates for Greater London and the justices' clerks<sup>4</sup> for any part of Greater London, if he considers that it would be in the interests of the efficient and effective administration of magistrates' courts generally for it to do so<sup>5</sup>. Such regulations may include provision requiring the Greater London Magistrates' Courts Authority to obtain the specified goods or services, or goods or services of the specified description<sup>6</sup>: (1) from a specified person or person of a specified description<sup>7</sup>; (2) at or by a specified time<sup>8</sup>; or (3) both from such a person and at or by such a time<sup>9</sup>.

1 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 As to the Greater London Magistrates' Courts Authority see PARA 616 et seq ante.

3 As to the meaning of 'magistrate' see PARA 501 ante.

4 As to justices' clerks see PARA 631 et seq ante.

5 Justices of the Peace Act 1997 s 59A(1) (s 59A added by the Access to Justice Act 1999 s 83(2)); Justices of the Peace Act 1997 s 59E(1) (s 59E added by the Access to Justice Act 1999 s 84(1), (2)). A statutory instrument containing (whether alone or with other provisions) regulations made by virtue of the Justices of the Peace Act 1997 s 59E (as added) is subject to annulment in pursuance of a resolution of either House of Parliament: s 59E(3) (as so added). At the date at which this volume states the law no such regulations had been made.

6 See *ibid* s 59E(2) (as added: see note 5 *supra*).

7 See *ibid* s 59E(2)(a) (as added: see note 5 *supra*).

8 See *ibid* s 59E(2)(b) (as added: see note 5 *supra*).

9 See *ibid* s 59E(2)(c) (as added: see note 5 *supra*).

#### **UPDATE**

#### **637-651 General powers and duties of justices' clerks ... Powers of the inspectors**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(v) Inspection/650. Inspectors of the magistrates' courts service.

#### **(v) Inspection**

#### **650. Inspectors of the magistrates' courts service.**



The Lord Chancellor<sup>1</sup> may appoint such number of inspectors of the magistrates' courts service, to be known collectively as 'Her Majesty's Magistrates' Courts Service Inspectorate', as he may consider appropriate<sup>2</sup>, and he must appoint one of the persons so appointed to be Her Majesty's Chief Inspector of the Magistrates' Courts Service<sup>3</sup>. It is the duty of inspectors of the magistrates' courts service to inspect and report to the Lord Chancellor on the organisation and administration of magistrates' courts<sup>4</sup> for each magistrates' courts committee area<sup>5</sup> and to discharge such other functions in connection with the organisation and administration of magistrates' courts as the Lord Chancellor may from time to time direct<sup>6</sup>. It is also the duty of inspectors of the magistrates' courts service to: (1) inspect and report to the Lord Chancellor on the performance by the Children and Family Court Advisory and Support Service ('CAFCASS')<sup>7</sup> and the officers of the Service, of their functions<sup>8</sup>; and (2) discharge, in connection with those functions or with related functions of any other person, such functions as the Lord Chancellor may from time to time direct<sup>9</sup>.

Her Majesty's Chief Inspector of the Magistrates' Courts Service must make an annual report to the Lord Chancellor as to the discharge of the functions of the Inspectorate, and the Lord Chancellor must, within one month of receiving the report, lay a copy of it before each House of Parliament<sup>10</sup>.

If a recommendation is made for the taking of any action by a magistrates' courts committee, the Lord Chancellor may give a direction requiring the committee to take the recommended action within a period specified in the direction<sup>11</sup>.

The Lord Chancellor must make to or in respect of inspectors of the magistrates' courts service such payments by way of remuneration, allowances or otherwise as he may with the approval of the Treasury determine<sup>12</sup>.

1 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 Justices of the Peace Act 1997 s 62(1).

3 Ibid s 62(2).

4 For the meaning of 'magistrates' court' see PARA 583 ante.

5 As to magistrates' courts committees and their areas see PARA 612 et seq ante.

6 Justices of the Peace Act 1997 s 62(3).

7 As to the Children and Family Court Advisory and Support Service (CAFCASS) see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 230 et seq.

8 Justices of the Peace Act 1997 s 62(3A)(a) (s 62(3A) added by the Criminal Justice and Court Services Act 2000 s 17(1)).

9 Justices of the Peace Act 1997 s 62(3A)(b) (as added: see note 8 supra).

10 Ibid s 62(4).

11 Ibid s 62(4A) (added by the Access to Justice Act 1999 s 85).

12 Justices of the Peace Act 1997 s 62(5).

## UPDATE

### **637-651 General powers and duties of justices' clerks ... Powers of the inspectors**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

## **650 Inspectors of the magistrates' courts service**

TEXT AND NOTES--Replaced by Courts Act 2003 Pt 5 (ss 58-61).

Her Majesty's Inspectorate of Court Administration, which is comprised of such number of inspectors of court administration and one of whom is chief inspector, as the Lord Chancellor considers appropriate, is established: s 58 (amended by the Education and Inspections Act 2006 Sch 14 para 78, Sch 18 Pt 5). The inspectors have the duty to inspect and report on the system and services which support the Crown Court, county courts and magistrates' courts; and the Lord Chancellor may by order amend the list of courts mentioned: 2003 Act s 59 (amended by the 2006 Act Sch 14 para 79; and the Transfer of Functions (Children, Young People and Families) Order 2005, SI 2005/252).

The chief inspector has the functions specified in the 2003 Act s 60 (amended by the 2006 Act Sch 14 para 80; and SI 2005/252).

For further provision about the inspectors of court administration see PARA 650A.

Her Majesty's Chief Inspector of Education, Children's Services and Skills is now responsible for the inspection of the performance of CAFCASS functions: see the 2006 Act Pt 8 Ch 5 (ss 143-145); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 244.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(v) Inspection/650A. Further provision about the inspectors of court administration.

### **650A. Further provision about the inspectors of court administration.**

An inspector of court administration may delegate any of his functions, to such extent as he may determine, to another public authority<sup>1</sup>. The Chief Inspector must from time to time, or at such times as the Lord Chancellor may specify by order, prepare a document setting out what inspections he proposes to carry out (an 'inspection programme') or a document setting out the manner in which he proposes to carry out his functions of inspecting and reporting (an 'inspection framework')<sup>2</sup>. The Lord Chancellor may by order specify the form that inspection programmes or inspection frameworks are to take<sup>3</sup>. Nothing in any inspection programme or inspection framework is to be read as preventing the inspectors of court administration from making visits without notice<sup>4</sup>.

If (1) the Audit Commission for Local Government and the National Health Service in England or any other person or body specified by an order made by the Lord Chancellor is proposing to carry out an inspection that would involve inspecting a specified organisation ; and (2) the Chief Inspector considers that the proposed inspection would impose an unreasonable burden on that organisation, or would do so if carried out in a particular manner, the Chief Inspector must give a notice to that person or body not to carry out the proposed inspection, or not to carry it out in that manner<sup>5</sup>. Where such a notice is given, the proposed inspection is not to be carried out, or, as the case may be, is not to be carried out in the manner mentioned in the notice<sup>6</sup>. The Lord Chancellor may by order make supplementary provision, including in particular (a) provision about the form of notices; (b) provision prescribing the period within which notices are to be given; (c) provision prescribing circumstances in which notices are, or are not, to be made public; (d) provision for revising or withdrawing notices; and (e) provision for setting aside notices not validly given<sup>7</sup>. The inspectors of court administration must co-operate with (i) Her Majesty's Chief Inspector of Prisons; (ii) Her Majesty's Inspectors of Constabulary; (iii) Her Majesty's Chief Inspector of the Crown Prosecution Service; (iv) Her

Majesty's Inspectorate of Probation for England and Wales; (v) Her Majesty's Chief Inspector of Education, Children's Services and Skills; (vi) the Care Quality Commission; (vii) the Audit Commission for Local Government and the National Health Service in England; (viii) the Auditor General for Wales; and (ix) any other public authority specified by an order made by the Lord Chancellor, where it is appropriate to do so for the efficient and effective discharge of the inspectors' functions<sup>8</sup>. The inspectors of court administration may act jointly with another public authority where it is appropriate to do so for the efficient and effective discharge of the inspectors' functions<sup>9</sup>. The Chief Inspector, acting jointly with Her Majesty's Chief Inspector of Prisons, Her Majesty's Chief Inspector of Constabulary, Her Majesty's Chief Inspector of the Crown Prosecution Service or Her Majesty's Chief Inspector of Probation for England and Wales, must prepare a document (a 'joint inspection programme') setting out what inspections the inspectors of court administration propose to carry out in the exercise of the above power, and what inspections the chief inspectors listed above, or their inspectorates, propose to carry out in the exercise of any corresponding powers conferred on them<sup>10</sup>. A joint inspection programme must be prepared from time to time or at such times as the Secretary of State, the Lord Chancellor and the Attorney General may jointly direct<sup>11</sup>. The Secretary of State, the Lord Chancellor and the Attorney General may by a joint direction specify the form that a joint inspection programme is to take<sup>12</sup>. The inspectors of court administration may if they think it appropriate to do so provide assistance to any other public authority for the purpose of the exercise by that authority of its functions<sup>13</sup>.

1 Courts Act 2003 s 61A, Sch 3A para 1(1) (added by the Police and Justice Act 2006 s 32; 2003 Act Sch 3A amended by the Local Government and Public Involvement in Health Act 2007 Sch 9 para 1(2)(u), Sch 18 Pt 9; the Health and Social Care Act 2008 Sch 5 para 75, Sch 15 Pt 1; and SI 2008/912). If an inspector of court administration delegates the carrying out of an inspection under the 2003 Act Sch 3A para 1(1) it is nevertheless to be regarded for the purposes of Pt 5 as carried out by the inspector: Sch 3A para 1(2). 'Public authority' includes any person certain of whose functions are functions of a public nature: Sch 3A para 1(3).

2 Ibid Sch 3A para 2(1). Before preparing an inspection programme or an inspection framework the Chief Inspector must consult the Lord Chancellor, the Lord Chief Justice of England and Wales and (1) Her Majesty's Chief Inspector of Prisons; (2) Her Majesty's Chief Inspector of Constabulary; (3) Her Majesty's Chief Inspector of the Crown Prosecution Service; (4) Her Majesty's Chief Inspector of Probation for England and Wales; (5) Her Majesty's Chief Inspector of Education, Children's Services and Skills; (6) the Care Quality Commission; (7) the Audit Commission for Local Government and the National Health Service in England; (8) the Auditor General for Wales; and (9) any other person or body specified by an order made by the Lord Chancellor, and he must send to each of those persons or bodies a copy of each programme or framework once it is prepared: Sch 3A para 2(2). The requirement to consult, and to send copies to, a person or body listed above is subject to any agreement made between the Chief Inspector and that person or body to waive the requirement in such cases or circumstances as may be specified in the agreement: Sch 3A para 2(3).

3 Ibid Sch 3A para 2(4).

4 Ibid Sch 3A para 2(5).

5 Ibid Sch 3A para 3(1), (2). In head (1) 'specified organisation' means a person or body specified by an order made by the Lord Chancellor: Sch 3A para 3(3). A person or body may be specified under Sch 3A para 3(3) only if it exercises functions in relation to any matter falling within the scope of the duties of the inspectors of court administration under s 59 (see PARA 650): Sch 3A para 3(4). A person or body may be specified under Sch 3A para 3(3) in relation to particular functions that it has; in the case of a person or body so specified, head (1) is to be read as referring to an inspection that would involve inspecting the discharge of any of its functions in relation to which it is specified: Sch 3A para 3(5). The Lord Chancellor may by order specify cases or circumstances in which a notice need not, or may not, be given under Sch 3A para 3: Sch 3A para 3(6).

6 Ibid Sch 3A para 3(7). The Lord Chancellor, if satisfied that the proposed inspection would not impose an unreasonable burden on the organisation in question, or would not do so if carried out in a particular manner, may give consent to the inspection being carried out, or being carried out in that manner: Sch 3A para 3(8).

7 Ibid Sch 3A para 3(9).

8 Ibid Sch 3A para 4.

9 Ibid Sch 3A para 5(1).

10 Ibid Sch 3A para 5(2), (3).

11 Ibid Sch 3A para 5(4). Sch 3A para 2(2), (3), (5) (see NOTES 2, 4) apply to a joint inspection programme as they apply to a document prepared under Sch 3A para 2: Sch 3A para 5(5).

12 Ibid Sch 3A para 5(6).

13 Ibid Sch 3A para 6(1). Assistance under Sch 3A para 6 may be provided on such terms, including terms as to payment, as the Chief Inspector thinks fit: Sch 3A para 6(2).

## UPDATE

### **637-651 General powers and duties of justices' clerks ... Powers of the inspectors**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(v) Inspection/651. Powers of the inspectors.

#### **651. Powers of the inspectors.**

An inspector of the magistrates' courts service exercising his functions with regard to the inspection<sup>1</sup> has at all reasonable times:

- 139 (1) a right of entry to any courthouse or other premises occupied by a magistrates' courts committee<sup>2</sup>; and
- 140 (2) a right to inspect, and take copies of, any records<sup>3</sup> kept by a magistrates' courts committee, and any other documents containing information relating to the administration of the magistrates' courts<sup>4</sup> for its area, which he considers relevant to the discharge of his functions<sup>5</sup>.

However, this does not entitle an inspector to be present when a magistrates' court is hearing proceedings in private or to attend any private deliberations of the justices of the peace<sup>6</sup>.

An inspector of the magistrates' courts service exercising such functions also has at all reasonable times:

- 141 (a) a right of entry to any premises occupied by the Children and Family Court Advisory and Support Service ('CAFCASS')<sup>7</sup>; and
- 142 (b) a right to inspect, and take copies of, any records<sup>8</sup> kept by CAFCASS, and any other documents containing information relating to the performance of the functions of CAFCASS or its officers which he considers relevant to the discharge of his functions<sup>9</sup>.

1 Ie his functions under the Justices of the Peace Act 1997 s 62 (as amended): see PARA 650 ante.

2 Ibid s 63(1)(a). As to magistrates' courts committees see PARA 612 et seq ante.

3 The records referred to in ibid s 63(1)(b), (2A)(b) (as added) include records kept by means of a computer, and an inspector exercising the power to inspect records conferred by s 63(1) or (2A) (as added): (1) is entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and associated apparatus or material which is or has been in use in connection with the records in question; and (2) may require the person by whom or on whose behalf the computer is or has been so used or any person having

charge of, or otherwise concerned with the operation of, the computer, apparatus or material, to afford him such reasonable assistance as he may require: s 63(3) (amended by the Criminal Justice and Court Services Act 2000 s 17(2)).

4 For the meaning of 'magistrates' court' see PARA 583 ante.

5 Justices of the Peace Act 1997 s 63(1)(b).

6 Ibid s 63(2).

7 Ibid s 63(2A)(a) (s 63(2A) added by the Criminal Justice and Court Services Act 2000 s 17(2)(a)). As to the Children and Family Court Advisory and Support Service see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 230 et seq.

8 See note 3 supra.

9 Justices of the Peace Act 1997 s 63(2A)(b) (as added: see note 7 supra).

## UPDATE

### **637-651 General powers and duties of justices' clerks ... Powers of the inspectors**

Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

### **651 Powers of the inspectors**

TEXT AND NOTES--Replaced by Courts Act 2003 s 61. The inspectors have a right of entry to any place of work occupied by those providing support systems or services to the relevant courts (see PARA 650) or CAFCASS: s 61.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/2. MAGISTRATES' COURTS/(3) ADMINISTRATION AND FINANCE/(vi) Pensions/652. Superannuation.

## **(vi) Pensions**

### **652. Superannuation.**

Pensions for employees of magistrates' courts committees<sup>1</sup>, including justices' clerks<sup>2</sup> and justices' chief executives<sup>3</sup> are governed by the Local Government Pension Scheme Regulations 1997<sup>4</sup>. This scheme also covers pensions for employees of the Greater London Magistrates' Courts Authority<sup>5</sup>, with the exception of persons who immediately before 1 April 2001<sup>6</sup> were members of the inner London court staff<sup>7</sup> and were transferred to the Greater London Magistrates' Courts Authority and whose pensions fall under the Superannuation (Miscellaneous Provisions) Act 1967<sup>8</sup>. However, the Lord Chancellor<sup>9</sup> may, with the consent of the Minister for the Civil Service<sup>10</sup>, make provision by order<sup>11</sup> for the civil service pension scheme<sup>12</sup> to apply to persons employed by the Greater London Magistrates' Courts Authority<sup>13</sup>.

1 Provision is made in relation to persons employed by two or more magistrates' courts committees by the Local Government Pension Scheme Regulations 1997, SI 1997/1612, reg 133(5)-(11). As to magistrates' courts committees see PARA 612 et seq ante.

2 As to justices' clerks see PARA 631 et seq ante. See note 3 infra.

3 The Local Government Pension Scheme Regulations 1997, SI 1997/1612 (amended by SI 1997/954; SI 1998/1129; SI 1998/1238; SI 1998/2118; SI 1999/1212; SI 1999/3428; SI 2000/1005; SI 2000/1164; SI 2000/1410; SI 2000/3025; SI 2001/770; SI 2001/1418; SI 2001/2866; SI 2001/3401; SI 2002/206) make special provision in relation to the retirement age of justices' clerks and justices' chief executives: see the Local Government Pension Scheme Regulations 1997, SI 1997/1612, reg 133(3), (4). As to the justices' chief executive see PARA 624 et seq ante.

4 Ibid reg 4(2), (3), Sch 2. As to the local government pension scheme see LOCAL GOVERNMENT vol 69 (2009) PARA 448 et seq. As to public service pension schemes generally see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 874 et seq. As to pensions generally see SOCIAL SECURITY AND PENSIONS.

5 See ibid reg 4(2), (6)(n) (reg 4(6)(n) added with retrospective effect from 1 December 2000 by SI 2001/1481). As to the Greater London Magistrates' Courts Authority see PARA 616 et seq ante.

6 Ie the commencement of the Inner London Court Staff Pensions Order 2001, SI 2001/733.

7 For these purposes, 'inner London court staff' means: (1) the justices' chief executive employed by the magistrates' courts committee for the area consisting of the inner London boroughs; (2) any justices' clerk for that area; and (3) staff of the magistrates' courts committee for that area: Access to Justice Act 1999 s 105, Sch 14 para 36(11); Inner London Court Staff Pensions Order 2001, SI 2001/733, art 2(4).

8 See the Superannuation (Miscellaneous Provisions) Act 1967 s 15(1) (amended by the Superannuation Act 1972 s 14(1)-(3); the Police and Magistrates' Courts Act 1994 s 91, Sch 8 Pt II para 25; the Access to Justice Act 1999 s 106, Sch 15 Pt V; the Greater London Authority Act 1999 s 325, Sch 27 para 20(1), (2); and Local Government Superannuation Regulations 1974, SI 1974/520, reg MI(1), Sch 18 Pt I para 6); the Access to Justice Act 1999 Sch 14 para 36(1), (2), (3)(b); and the Inner London Court Staff Pensions Order 2001, SI 2001/733, art 2(1) (amended by SI 2001/1425). Pensions under the Superannuation (Miscellaneous Provisions) Act 1967 fall under the civil service pension scheme: see the Superannuation (Miscellaneous Provisions) Act 1967 s 15(2D) (added by the Greater London Authority Act 1999 Sch 27 para 20(1), (3)). As to the civil service pension scheme see the Superannuation Act 1972 ss 1, 2 (both as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567 et seq.

9 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

10 As to the Minister for the Civil Service see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 427.

11 A statutory instrument containing an order under the Justices of the Peace Act 1997 s 50(1) (as substituted) (see the text and notes 9-10 supra, 12-13 infra) is subject to annulment in pursuance of a resolution of either House of Parliament: s 50(7) (s 50 substituted by the Access to Justice Act 1999 s 83(3), Sch 12 paras 9, 13). At the date at which this volume states the law no orders had been made under the Justices of the Peace Act 1997 s 50(1) (as substituted).

12 Ie under the Superannuation Act 1972 s 1 (as amended): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567 et seq.

13 Justices of the Peace Act 1997 s 50(1) (as substituted: see note 11 supra). The Lord Chancellor may, with the consent of the Minister for the Civil Service make such provision by the amendment of the Superannuation Act 1972: see the Justices of the Peace Act 1997 s 50(1) (as so substituted). An order under s 50(1) (as substituted) may provide for the Authority to pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of the increase attributable to such provision in the sums payable under the Superannuation Act 1972 out of money provided by Parliament: Justices of the Peace Act 1997 s 50(2) (as so substituted). Where such an order is made, the Minister for the Civil Service may, to such extent and subject to such conditions as he thinks fit: (1) delegate to any person the function of administering a scheme made under the Superannuation Act 1972 s 1 (as amended), so far as relating to employees of the Authority; or (2) authorise the exercise of that function (so far as so relating) by, or by employees of, any person: Justices of the Peace Act 1997 s 50(3) (as so substituted). A person to whom the function of administering a scheme made under the Superannuation Act 1972 s 1 (as substituted) is delegated under head (1) supra may, to such extent and subject to such conditions as he may determine, authorise the exercise of that function by, or by employees of, any person: Justices of the Peace Act 1997 s 50(4) (as so substituted). Where a person is authorised under head (2) supra or under or s 50(4) to exercise the function of administering a scheme made under the Superannuation Act 1972 s 1 (as amended), anything done or omitted to be done by or in relation to him (or an employee of his) in, or in connection with, the exercise or purported exercise of the function is treated for all purposes as done or omitted to be done by the person who authorised him: Justices of the Peace Act 1997 s 50(5) (as so substituted). However, s 50(5) (as substituted) does not apply for the purposes of: (a) any criminal proceedings against the authorised person (or any employee of his); or (b) any contract between him and the person who authorised him, so far as relating to the function: s 50(6) (as substituted).

**UPDATE****652 Superannuation**

NOTES 1, 3--SI 1997/1612 revoked (subject to savings) by SI 2008/238, and amended by SI 2008/2425. See now the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007, SI 2007/1166 (amended by SI 2008/1083, SI 2009/1025) and the Local Government Pension Scheme (Administration) Regulations 2008, SI 2008/239 (amended by SI 2008/1083, SI 2008/2989, SI 2008/3245, SI 2009/447, SI 2009/1025).

TEXT AND NOTES 5-13--See now the Greater London Magistrates' Courts Authority (Pensions) Order 2002, SI 2002/2143, which applies the civil service pension scheme under the Superannuation Act 1972 s 1 to (1) employees of the Greater London Magistrates' Courts Authority; and (2) persons who are not so employed, but who have been members of the inner London court staff, and who immediately before 13 September 2002 were entitled to a present or future pension or benefits by virtue of the Superannuation (Miscellaneous Provisions) Act 1967 s 15.

TEXT AND NOTES 5-8--Those persons who were transferred to the Greater London Magistrates' Courts Authority on 1 April 2001 continue to be eligible as members of the Metropolitan Civil Staffs Superannuation Scheme even though they have ceased to be members of the metropolitan civil staffs: see the Warrant Enforcement Staff Pensions Order 2002, SI 2002/1043.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(1) CRIMINAL AND CIVIL JURISDICTION/(i) Criminal Jurisdiction/A. MODE OF TRIAL/653. The procedural classification of offences.

**3. PROCEEDINGS IN MAGISTRATES' COURTS****(1) CRIMINAL AND CIVIL JURISDICTION****(i) Criminal Jurisdiction****A. MODE OF TRIAL****653. The procedural classification of offences.**

As regards mode of trial, there are three classes of offence<sup>1</sup>: (1) offences triable only on indictment, where the role of the magistrates is solely to send the defendant for trial<sup>2</sup>; (2) offences triable only summarily, the trial of which cannot take place on indictment<sup>3</sup>; and (3) offences triable either way, namely offences which, if committed by an adult, are triable either on indictment or summarily<sup>4</sup>.

An 'indictable offence' means an offence which, if committed by an adult, is triable on indictment, whether it is exclusively so triable or triable either way, and the term 'indictable', in its application to offences, is to be construed accordingly<sup>5</sup>. A 'summary offence' means an offence which, if committed by an adult, is triable only summarily, and the term 'summary', in its application to offences, is to be construed accordingly<sup>6</sup>. An 'offence triable either way' means an offence<sup>7</sup>, which, if committed by an adult, is triable either on indictment or

summarily, and the term 'triable either way', in its application to offences, is to be construed accordingly<sup>8</sup>.

1 This classification of offences and the procedure for selecting the mode of trial derive from recommendations contained in the *Report of the Interdepartmental Committee on the Distribution of Criminal Business between the Crown Court and Magistrates' Court* (the James Committee) (Cmnd 6323) (1975) which were given effect by the Criminal Law Act 1977.

2 See the Crime and Disorder Act 1998 s 51; and PARA 654 post.

3 There are numerous offences covering varied subject matter which are triable only summarily and these are dealt with in individual titles in this work. The Crown Court may deal with purely summary matters if they are linked to trial on indictment: see the Criminal Justice Act 1988 ss 40, 41 (both as amended); and PARA 660 post.

4 See the Magistrates' Courts Act 1980 s 17, Sch 1 (as amended); and PARA 655 post. As to penalties for offences triable either way see PARA 656 post.

5 Criminal Law Act 1977 s 64(1)(a); Interpretation Act 1978 s 5, Sch 1. In the definition 'indictable offence' references to the way or ways in which an offence is triable are to be construed without regard to the effect, if any, of the Magistrates' Courts Act 1980 s 22 (as amended) (cases where the value involved is small) (see PARA 661 post; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1114) on the mode of trial: Criminal Law Act 1977 s 64(2) (amended by the Magistrates' Courts Act 1980 s 154, Sch 7 para 152); Interpretation Act 1978 s 5, Sch 1 (amended by the Magistrates' Courts Act 1980 Sch 7 para 169(c)).

As to the procedure for offences triable on indictment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1105 et seq; and as to indictments generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 1202 et seq.

6 Criminal Law Act 1977 s 64(1)(b); Interpretation Act 1978 Sch 1. In the definition of 'summary offence' references to the way or ways in which an offence is triable are to be construed without regard to the effect, if any, of the Magistrates' Courts Act 1980 s 22 (as amended) (cases where the value involved is small) (see PARA 661 post; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1114) on the mode of trial: Criminal Law Act 1977 s 64(2) (as amended: see note 5 supra); Interpretation Act 1978 s 5, Sch 1 (as amended: see note 5 supra).

Any offence consisting in the incitement to commit a summary offence is triable only summarily: Magistrates' Courts Act 1980 s 45(1). This is without prejudice to any other enactment by virtue of which any offence is triable only summarily: s 45(2).

As to the procedure for offences triable summarily see PARA 681 et seq post.

7 Ie other than an offence triable on indictment only by virtue of the Criminal Justice Act 1988 Pt V (ss 37-70) (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE): Interpretation Act 1978 Sch 1 (amended by the Criminal Justice Act 1988 s 170(1), Sch 15 para 59).

8 Criminal Law Act 1977 s 64(1)(c); Interpretation Act 1978 Sch 1. In the definition of 'offence triable either way' references to the way or ways in which an offence is triable are to be construed without regard to the effect, if any, of the Magistrates' Courts Act 1980 s 22 (as amended) (cases where the value involved is small) (see PARA 661 post; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1114) on the mode of trial: Criminal Law Act 1977 s 64(2) (as amended: see note 5 supra); Interpretation Act 1978 Sch 1 (as amended: see note 5 supra).

As to the procedure for offences triable either way see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1109 et seq.

## UPDATE

### 653 The procedural classification of offences

NOTE 6--1980 Act s 45 repealed: Serious Crime Act 2007 Sch 6 para 55(3), Sch 14.



Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(1) CRIMINAL AND CIVIL JURISDICTION/(i) Criminal Jurisdiction/A. MODE OF TRIAL/654. Offences triable only on indictment.

#### **654. Offences triable only on indictment.**

Where an adult<sup>1</sup> appears or is brought before a magistrates' court<sup>2</sup> charged with an offence triable only on indictment ('the indictable-only offence')<sup>3</sup> the court must send him<sup>4</sup> to the Crown Court for trial for that offence, and for any either-way<sup>5</sup> or summary offence<sup>6</sup> with which he is charged which fulfils the requisite conditions<sup>7</sup>. Where an adult who has been sent for trial<sup>8</sup> subsequently appears or is brought before a magistrates' court charged with an either-way or summary offence which fulfils the requisite conditions, the court may send him to the Crown Court for trial for the either-way or summary offence<sup>9</sup>.

Where (1) a magistrates' court sends an adult for trial<sup>10</sup>; and (2) another adult appears or is brought before the court on the same or a subsequent occasion charged jointly with him with an either-way offence<sup>11</sup>; and (3) that offence appears to the court to be related to the indictable-only offence<sup>12</sup>, the court must, where it is the same occasion, and may, where it is a subsequent occasion, send the other adult to the Crown Court for trial for the either-way offence<sup>13</sup>. Where a magistrates' court sends that other adult for trial<sup>14</sup>, it must at the same time send him to the Crown Court for trial for any either-way or summary offence with which he is charged which fulfils the requisite conditions<sup>15</sup>.

Where (a) the magistrates' court sends an adult for trial<sup>16</sup>; and (b) a child<sup>17</sup> or young person<sup>18</sup> appears or is brought before the court on the same or a subsequent occasion charged jointly with the adult with an indictable offence for which the adult is sent for trial<sup>19</sup>, the court must, if it considers it necessary in the interests of justice to do so, send the child or young person to the Crown Court for trial for the indictable offence<sup>20</sup>. Where a magistrates' court sends a child or young person for trial<sup>21</sup>, it may at the same time send him to the Crown Court for trial for any either-way or summary offence with which he is charged which fulfils the requisite conditions<sup>22</sup>.

The magistrates' court must specify in a notice the offence or offences for which a person is sent for trial<sup>23</sup> and the place at which he is to be tried, and a copy of the notice must be served on the accused and given to the Crown Court sitting at that place<sup>24</sup>. In a case where there is more than one indictable-only offence and the magistrates' court includes an either-way or a summary offence in the notice, the court must specify in that notice the indictable-only offence to which the either-way offence or, as the case may be, the summary offence appears to the court to be related<sup>25</sup>.

A magistrates' court may adjourn any proceedings<sup>26</sup> and if it does so must remand the accused<sup>27</sup>. The trial of the information<sup>28</sup> charging any summary offence for which a person is sent for trial<sup>29</sup> must be treated as if the magistrates' court had adjourned it<sup>30</sup> and had not fixed the time and place for its resumption<sup>31</sup>.

In selecting the place of trial<sup>32</sup> the magistrates' court must have regard to: (i) the convenience of the defence, the prosecution and the witnesses<sup>33</sup>; (ii) the desirability of expediting the trial<sup>34</sup>; and (iii) any direction given by or on behalf of the Lord Chief Justice<sup>35</sup> with the concurrence of the Lord Chancellor<sup>36</sup>.

1 'Adult' means a person aged 18 or over, and references to an adult include references to a corporation: Crime and Disorder Act 1998 s 51(12)(a). The age of a person is deemed to be that which it appears to the court to be after considering any available evidence: s 117(3). As to the attainment of a particular age see PARA 738 note 1 post.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 The court must treat as an indictable offence for the purposes of the Crime and Disorder Act 1998 s 51 an offence which is mentioned in the Magistrates' Courts Act 1980 s 22(1), Sch 2 col 1 (as amended) (offences for which the value involved is relevant to the mode of trial) (see PARA 661 post; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1114) unless it is clear to the court, having regard to any representations made by the prosecutor or the accused, that the value involved does not exceed the relevant sum: Crime and Disorder Act 1998 s 52(3). For the meaning of 'indictable offence' generally see PARA 653 ante. For the meaning of 'the value involved' see PARA 661 note 10 post; definition applied by s 52(4). For the meaning of 'the relevant sum' see PARA 661 note 11 post; definition applied by s 52(4).

4 Subject to the Bail Act 1976 s 4 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1169 et seq), the Magistrates' Courts Act 1980 s 41 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1178), regulations under the Prosecution of Offences Act 1985 s 22 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1152) and the Criminal Justice and Public Order Act 1994 s 25 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1170), the magistrates' court may send a person to trial under the Crime and Disorder Act 1998 s 51: (1) in custody, that is to say, by committing him to custody there to be safely kept until delivered in due course of law (s 52(1)(a)); or (2) on bail in accordance with the Bail Act 1976, that is to say, by directing him to appear before the Crown Court for trial (Crime and Disorder Act 1998 s 52(1)(b)). For the meaning of 'Crown Court' see PARA 508 note 9 ante.

Where (a) the person's release on bail under head (2) supra is conditional on his providing one or more sureties (s 52(2)(a)); and (b) in accordance with the Bail Act 1976 s 8(3) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1172), the court fixes the amount in which a surety is to be bound with a view to his entering into his recognisance subsequently in accordance with s 8(4), (5) or s 8(6) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1172) (Crime and Disorder Act 1998 s 52(2)(b)), the court must in the meantime make an order such as is mentioned in head (1) supra (s 52(2)).

5 'Either-way offence' means an offence which, if committed by an adult, is triable either on indictment or summarily: *ibid* s 51(12)(b).

6 For the meaning of 'summary offence' see PARA 653 ante.

7 Crime and Disorder Act 1998 s 51(1). An offence fulfils the requisite conditions if: (1) it appears to the magistrates' court to be related to the indictable-only offence (s 51(11)(a)); and (2) in the case of a summary offence, it is punishable with imprisonment or involves obligatory or discretionary disqualification from driving (s 51(11)(b)).

As to the procedure where persons are sent for trial under s 51 see s 52(6), Sch 3; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1138-1141.

8 *Ie* under *ibid* s 51(1): see the text and notes 1-7 supra.

9 *Ibid* s 51(2).

10 *Ibid* s 51(3)(a). The trial referred to in the text is one brought under s 51(1): see the text and notes 1-7 supra.

11 *Ibid* s 51(3)(b).

12 *Ibid* s 51(3)(c). An either-way offence is related to an indictable-only offence if the charge for the either-way offence could be joined in the same indictment as the charge for the indictable-only offence: s 51(12)(c). A summary offence is related to an indictable-only offence if it arises out of circumstances which are the same as or connected with those giving rise to the indictable-only offence: s 51(12)(d).

13 *Ibid* s 51(3).

14 *Ie* under *ibid* s 51(3): see the text and notes 10-13 supra.

15 *Ibid* s 51(4).

16 *Ibid* s 51(5)(a). The trial referred to in the text is one brought under s 51(1) or s 51(3): see the text to notes 1-7, 10-13 supra.

17 'Child' means a person under the age of 14: *ibid* s 117(1).

18 'Young person' means a person who has attained the age of 14 and is under the age of 18: *ibid* s 117(1).

19 *Ibid* s 51(5)(b).

- 20 Ibid s 51(5).
- 21 Ie under ibid s 51(5): see the text and notes 16-20 supra.
- 22 Ibid s 51(6).
- 23 Ie under ibid s 51.
- 24 Ibid s 51(7).
- 25 Ibid s 51(8).
- 26 Ie under ibid s 51. As to the adjournment of a trial or hearing see PARA 707 post.
- 27 Ibid s 52(5).
- 28 As to the laying of informations see PARA 681 et seq post.
- 29 Ie under the Crime and Disorder Act 1998 s 51.
- 30 Ie under the Magistrates' Courts Act 1980 s 10: see PARA 707 post.
- 31 Crime and Disorder Act 1998 s 51(9).
- 32 Ie for the purpose of ibid s 51(7): see the text and notes 23-24 supra.
- 33 Ibid s 51(10)(a).
- 34 Ibid s 51(10)(b).
- 35 As to the appointment and tenure of office of the Lord Chief Justice see COURTS.
- 36 Crime and Disorder Act 1998 s 51(10)(c). The text refers to a direction given under the Supreme Court Act 1981 s 75(1) (allocation of cases): see COURTS; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1228. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

## UPDATE

### 654 Offences triable only on indictment

NOTE 7--A magistrates' court's powers under s 51 are not limited to charges brought prior to the defendant's first appearance in court but extend to alternative charges preferred by a prosecutor after the defendant's first appearance: *R (on the application of Salubi and Wanogho) v Bow Street Magistrates' Court*; *R (on the application of Harmer) v Customs and Excise Comrs*; *R (on the application of Ojutaleyo) v Crown Court at Bournemouth* [2002] EWHC 919 (Admin), [2002] 1 WLR 3073, DC.

NOTE 36--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(1) CRIMINAL AND CIVIL JURISDICTION/(i) Criminal Jurisdiction/A. MODE OF TRIAL/655. Offences triable either way.

### 655. Offences triable either way.

The following offences are listed in the Magistrates' Courts Act 1980 as being triable either way<sup>1</sup>: (1) offences at common law of public nuisance<sup>2</sup>; (2) appearing to be the keeper of bawdy houses<sup>3</sup>; (3) administering an oath, affidavit, or solemn affirmation touching matters in which a

person has no jurisdiction<sup>4</sup>; (4) obstructing engines or carriages on railways<sup>5</sup>; (5) threats to kill<sup>6</sup>; (6) inflicting bodily injury, with or without a weapon<sup>7</sup>; (7) not providing apprentices or servants with food<sup>8</sup>; (8) abandoning or exposing any child<sup>9</sup>; (9) doing or omitting to do anything so as to endanger railway passengers<sup>10</sup>; (10) assaulting a clergyman at a place of worship<sup>11</sup>; (11) assault with intent to resist apprehension<sup>12</sup>; (12) assault occasioning bodily harm<sup>13</sup>; (13) bigamy<sup>14</sup>; (14) concealing the birth of a child<sup>15</sup>; (15) disclosing or intercepting messages<sup>16</sup>; (16) transactions intended to defraud creditors<sup>17</sup>; (17) obliteration of marks with intent to conceal<sup>18</sup>; (18) false returns<sup>19</sup>; (19) damaging submarine cables<sup>20</sup>; (20) offences in relation to dies and stamps<sup>21</sup>; (21) making false representations with a view to procuring the burning of any human remains<sup>22</sup>; (22) specified offences under the Perjury Act 1911<sup>23</sup>; (23) misdemeanour of trustee making preferential payments under a deed of arrangement<sup>24</sup>; (24) disclosing census information<sup>25</sup>; (25) forgery of passports<sup>26</sup>; (26) frauds by farmers<sup>27</sup>; (27) unlawful sexual intercourse with a girl under 16<sup>28</sup>; (28) indecency between men<sup>29</sup>; (29) permitting a girl under 16 to use premises for sexual intercourse<sup>30</sup>; (30) assisting offenders where the offence to which they relate is triable either way<sup>31</sup>; (31) concealing arrestable offences and giving false information where the offence to which they relate is triable either way<sup>32</sup>; (32) procuring others to commit homosexual acts<sup>33</sup>; (33) specified offences under the Theft Act 1968<sup>34</sup>; (34) destroying or damaging property<sup>35</sup>; (35) arson<sup>36</sup>; (36) threats to destroy or damage property<sup>37</sup>; (37) possessing anything with intent to destroy or damage property<sup>38</sup>; (38) offences in relation to stamps issued for the purpose of national insurance under the provisions of any enactment as applied to those stamps<sup>39</sup>; (39) committing an indecent assault upon a person whether male or female<sup>40</sup>; (40) aiding, abetting, counselling or procuring the commission of any offence listed in heads (1) to (39) above except head (30) and head (31) above<sup>41</sup>; (41) any offence consisting in the incitement to commit an offence triable either way except an offence mentioned in head (40) above<sup>42</sup>.

An offence may be triable either way because it is stated to be so in the enactment<sup>43</sup> which creates the offence<sup>44</sup>.

A person guilty<sup>45</sup> of attempting to commit an offence that is triable either way is liable on summary conviction to any penalty to which he would have been liable on summary conviction of that offence<sup>46</sup>.

1 Magistrates' Courts Act 1980 s 17(1) (which is expressed to be without prejudice to any other enactment by virtue of which any offence is triable either way (s 17(2))). For the meaning of 'offence triable either way' see PARA 653 ante.

2 Ibid s 17(1), Sch 1 para 1. As to offences at common law of public nuisance see NUISANCE vol 78 (2010) PARA 104 et seq.

3 Ibid Sch 1 para 2. The offences referred to in the text are those under the Disorderly Houses Act 1751 s 8 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 223.

4 Magistrates' Courts Act 1980 Sch 1 para 3. The offences referred to in the text are those that contravene the Statutory Declarations Act 1835 s 13 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1103.

5 Magistrates' Courts Act 1980 Sch 1 para 4. The offences referred to in the text are those under the Malicious Damage Act 1861 s 36: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 344.

6 Magistrates' Courts Act 1980 Sch 1 para 5(a). The offences referred to in the text are those under the Offences Against the Person Act 1861 s 16 (as substituted): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 105.

7 Magistrates' Courts Act 1980 Sch 1 para 5(b). The offences referred to in the text are those under the Offences Against the Person Act 1861 s 20 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 120.

8 Magistrates' Courts Act 1980 Sch 1 para 5(c). The offences referred to in the text are those under the Offences Against the Person Act 1861 s 26 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 146.

9 Magistrates' Courts Act 1980 Sch 1 para 5(d). The offences referred to in the text are those under the Offences Against the Person Act 1861 s 27 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 143.

10 Magistrates' Courts Act 1980 Sch 1 para 5(e). The offences referred to in the text are those under the Offences Against the Person Act 1861 s 34 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 134.

11 Magistrates' Courts Act 1980 Sch 1 para 5(f). The offences referred to in the text are those under the Offences Against the Person Act 1861 s 36: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 827.

12 Magistrates' Courts Act 1980 Sch 1 para 5(g). The offences referred to in the text are those under the Offences Against the Person Act 1861 s 38 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 737.

13 Magistrates' Courts Act 1980 Sch 1 para 5(h) (amended by the Criminal Justice Act 1988 s 170(2), Sch 16). The offences referred to in the text are those under the Offences Against the Person Act 1861 s 47 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 149.

14 Magistrates' Courts Act 1980 Sch 1 para 5(i). The offences referred to in the text are those under the Offences Against the Person Act 1861 s 57 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 828.

15 Magistrates' Courts Act 1980 Sch 1 para 5(j). The offences referred to in the text are those under the Offences Against the Person Act 1861 s 60 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 113.

16 Magistrates' Courts Act 1980 Sch 1 para 6. The offences referred to in the text are those under the Telegraph Act 1868 s 20 (as amended).

17 Magistrates' Courts Act 1980 Sch 1 para 7. The offences referred to in the text are those under the Debtors Act 1869 s 13 (as amended): see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

18 Magistrates' Courts Act 1980 Sch 1 para 8. The offences referred to in the text are those under the Public Stores Act 1875 s 5 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 542.

19 Magistrates' Courts Act 1980 Sch 1 para 9. The offences referred to in the text are those under the Corn Returns Act 1882 s 12 (as amended): see AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARAS 1325, 1327.

20 Magistrates' Courts Act 1980 Sch 1 para 11. The offences referred to in the text are those under the Submarine Telegraph Act 1885 s 3 (as amended): see TELECOMMUNICATIONS vol 97 (2010) PARA 207.

21 Magistrates' Courts Act 1980 Sch 1 para 12. The offences referred to in the text are those under the Stamp Duties Management Act 1891 s 13 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 354.

22 Magistrates' Courts Act 1980 Sch 1 para 13. The offences referred to in the text are those under the Cremation Act 1902 s 8(2) (as amended): see CREMATION AND BURIAL.

23 Magistrates' Courts Act 1980 Sch 1 para 14. The offences referred to in the text are all those under the Perjury Act 1911 except those under s 1 (as amended) (perjury in judicial proceedings: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 712), s 3 (as amended) (false statements with reference to marriage: see REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 533), and s 4 (as amended) (false statements as to births or deaths: see REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 534): Magistrates' Courts Act 1980 Sch 1 para 14.

24 Ibid Sch 1 para 16. The offences referred to in the text are those under the Deeds of Arrangement Act 1914 s 17: see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

25 Magistrates' Courts Act 1980 Sch 1 para 18. The offences referred to in the text are those under the Census Act 1920 s 8(2) (as substituted): see REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 634.

26 Magistrates' Courts Act 1980 Sch 1 para 19. The offences referred to in the text are those under the Criminal Justice Act 1925 s 36 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 328.

- 27 Magistrates' Courts Act 1980 Sch 1 para 20. The offences referred to in the text are those under the Agricultural Credits Act 1928 s 11 (as amended): see AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 1329.
- 28 Magistrates' Courts Act 1980 Sch 1 para 23(a). The offences referred to in the text are those under the Sexual Offences Act 1956 s 6 (as amended).
- 29 Magistrates' Courts Act 1980 Sch 1 para 23(b). The offences referred to in the text are those under the Sexual Offences Act 1956 s 13 (as amended).
- 30 Magistrates' Courts Act 1980 Sch 1 para 23(c). The offences referred to in the text are those under the Sexual Offences Act 1956 s 26 (as amended).
- 31 Magistrates' Courts Act 1980 Sch 1 para 26(a). The offences referred to in the text are those under the Criminal Law Act 1967 s 4(1): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 58.
- 32 Magistrates' Courts Act 1980 Sch 1 para 26(b). The offences referred to in the text are those under the Criminal Law Act 1967 s 5(1): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 734.
- 33 Magistrates' Courts Act 1980 Sch 1 para 27. The offences referred to in the text are those under the Sexual Offences Act 1967 s 4(1).
- 34 Magistrates' Courts Act 1980 Sch 1 para 28. The offences referred to in the text are all indictable offences under the Theft Act 1968 except: (1) robbery, aggravated burglary, blackmail and assault with intent to rob (Magistrates' Courts Act 1980 Sch 1 para 28(a)); (2) burglary comprising the commission of, or an intention to commit, an offence which is triable only on indictment (Sch 1 para 28(b)); and (3) burglary in a dwelling if any person in the dwelling was subjected to violence or the threat of violence (Sch 1 para 28(c)): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 293-295, 308. For the meaning of 'indictable offence' see PARA 653 ante. As to theft generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 282 et seq.
- 35 Ibid Sch 1 para 29(1). The offences referred to in the text are those under the Criminal Damage Act 1971 s 1(1): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 334.
- 36 Magistrates' Courts Act 1980 Sch 1 para 29. The offences referred to in the text are those under the Criminal Damage Act 1971 s 1(1), (3): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 334.
- 37 Magistrates' Courts Act 1980 Sch 1 para 29. The offences referred to in the text are those under the Criminal Damage Act 1971 s 2: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 337.
- 38 Magistrates' Courts Act 1980 Sch 1 para 29. The offences referred to in the text are those under the Criminal Damage Act 1971 s 3: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 338.
- 39 Magistrates' Courts Act 1980 Sch 1 para 30. As to offences in relation to stamps issued for the purpose of national insurance see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 404.
- 40 Ibid Sch 1 para 32. As to indecent assaults upon persons see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 560.
- 41 Ibid Sch 1 para 33. As to aiding, abetting, counselling or procuring the commission of any offence see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 49 et seq.
- 42 Ibid Sch 1 para 35 (amended by the Criminal Attempts Act 1981 s 10, Schedule Pt I). As to incitement see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 65.
- 43 The usual statutory formula for creating an either way offence is to state that a person convicted of such an offence is liable 'on summary conviction to [penalty]' and 'on conviction on indictment to [penalty]'.
- 44 See the Magistrates' Courts Act 1980 s 17(2).
- 45 Ie by virtue of the Criminal Attempts Act 1981 s 1: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 79.
- 46 See ibid s 4(1)(c); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 83. As to the penalty on summary conviction see PARA 656 post.

## UPDATE

## 655 Offences triable either way

TEXT AND NOTES 1-42--Also, head (1A) an offence at common law of outraging public decency: Magistrates' Courts Act 1980 Sch 1 (amended by the Criminal Justice Act 2003 s 320(1)).

NOTE 3--Disorderly Houses Act 1751 repealed: Statute Law (Repeals) Act 2008.

NOTE 16--Telegraph Act 1868 s 20 repealed: Postal Services Act 2000 (Consequential Modifications No 1) Order 2001, SI 2001/1149.

TEXT AND NOTE 19--Corn Returns Act 1882 repealed: SI 2008/576.

TEXT AND NOTES 28-30, 33, 40--Heads (27)-(29), (32), (39) omitted: 1980 Act Sch 1 (amended by the Sexual Offences Act 2003 Sch 7). See further Violent Crime Reduction Act 2006 s 55 (continuity of sexual offences law).

TEXT AND NOTE 42--1980 Act Sch 1 para 35 repealed: Serious Crime Act 2007 Sch 6 para 55(4), Sch 14.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(1) CRIMINAL AND CIVIL JURISDICTION/(i) Criminal Jurisdiction/A. MODE OF TRIAL/656. Penalties on summary conviction of offences triable either way.

## 656. Penalties on summary conviction of offences triable either way.

On summary conviction of any of the listed offences triable either way<sup>1</sup> a person is liable to imprisonment for a term not exceeding six months or to a fine<sup>2</sup> not exceeding the prescribed sum<sup>3</sup> or both<sup>4</sup>. For any other offence triable either way<sup>5</sup>, being an offence under a relevant enactment<sup>6</sup>, the maximum fine which may be imposed on summary conviction is the prescribed sum unless the offence is one for which by virtue of another enactment<sup>7</sup> a larger fine may be imposed on summary conviction<sup>8</sup>. For any other offence triable either way by virtue of any other enactment, the maximum penalty is the statutory maximum or such other sum prescribed by the enactment<sup>9</sup>. For any offence triable either way under a subordinate instrument made before 12 October 1988<sup>10</sup>, the maximum fine which may be imposed on summary conviction is the statutory maximum unless the offence is one for which by virtue of the instrument a larger maximum fine may be imposed on summary conviction<sup>11</sup>.

A magistrates' court must not try an information or hear a complaint<sup>12</sup> unless the information was laid, or the complaint made, within six months from the time when the offence was committed, or the matter of complaint arose<sup>13</sup>.

1    Ie the offences listed in the Magistrates' Courts Act 1980 s 17, Sch 1 (as amended): see PARA 655 ante. For the meaning of 'offence triable either way' see PARA 653 ante.

2    'Fine' includes a pecuniary penalty but does not include a pecuniary forfeiture or pecuniary compensation: *ibid* s 32(9).

3    'The prescribed sum' means £5,000 or such sum as is for the time being substituted in this definition by an order in force under *ibid* s 143(1) (as substituted): s 32(9) (amended by the Criminal Justice Act 1991 s 17(2) (c)). If it appears to the Secretary of State that there has been a change in the value of money since the relevant date, he may by order substitute for the sum or sums for the time being specified in the definition of 'the prescribed sum' in the Magistrates' Courts Act 1980 s 32(9) (as amended) such other sum or sums as appear to him justified by the change: s 143(1) (substituted by the Criminal Justice Act 1982 s 48(1)(a)); Magistrates' Courts Act 1980 s 143(2)(b).

As to the Secretary of State see PARA 530 note 8 ante. For these purposes, the 'relevant date' means either 1 October 1992 (ie the date the Criminal Justice Act 1991 s 17 (increase of certain maxima) came into force) (Magistrates' Courts Act 1980 s 143(3)(a) (s 143(3) substituted by the Criminal Justice Act 1991 s 100, Sch 11 para 7)), or where the sums specified in a provision mentioned in the Magistrates' Courts Act 1980 s 143(2) (as amended) have been substituted by an order under s 143(1) (as substituted), the date of that order (s 143(3)(b) (as so substituted)).

An order under s 143(1) (as substituted) must be made by statutory instrument and is subject to annulment in pursuance of a resolution of either House of Parliament and may be revoked by a subsequent order thereunder, and does not affect the punishment for an offence committed before that order comes into force: s 143(6) (amended by the Criminal Justice Act 1988 s 170(2), Sch 16). At the date at which this volume states the law no such orders had been made.

4 Magistrates' Courts Act 1980 s 32(1). However: (1) a magistrates' court does not have power to impose imprisonment for an offence listed in Sch 1 (as amended) (see PARA 655 ante) if the Crown Court would not have that power in the case of an adult convicted on indictment (s 32(1) proviso (a)); (2) on summary conviction of an offence consisting in the incitement to commit an offence triable either way a person is not liable to any greater penalty than he would be liable to on summary conviction of the last-mentioned offence (s 32(1) proviso (b)); and (3) on conviction of an offence consisting in the incitement to commit a summary offence a person is liable to the same penalties as he would be liable to on conviction of the last-mentioned offence (s 45(3)). For the meaning of 'magistrates' court' see PARA 583 ante. For the meaning of 'impose imprisonment' see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 6. For the meaning of 'Crown Court' see PARA 508 note 9 ante. As to incitement see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 65.

Section 32 (as amended) extends, subject to modifications, to the Isle of Man and to Guernsey: see the Criminal Justice Act 1982 (Isle of Man) Order 1983, SI 1983/1898; and the Criminal Justice Act 1982 (Guernsey) Order 1992, SI 1992/3202.

5 Ie which is not listed in the Magistrates' Courts Act 1980 Sch 1 (as amended): see PARA 655 ante.

6 'Relevant enactment' means an enactment contained in the Criminal Law Act 1977 or in an Act passed before or in the same session as that Act: Magistrates' Courts Act 1980 s 32(9).

7 Ie an enactment other than *ibid* s 32(2).

8 *Ibid* s 32(2). Where, by virtue of any relevant enactment, a person summarily convicted of an offence triable either way would, apart from s 32 (as amended), be liable to a maximum fine of one amount in the case of a first conviction and of a different amount in the case of a second or subsequent conviction, s 32(2) applies irrespective of whether the conviction is a first, second or subsequent one: s 32(3).

Section 32(2) does not apply on summary conviction of any of the following offences:

- 55 (1) offences under the Misuse of Drugs Act 1971 s 5(2) (having possession of a controlled drug) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 770; and MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 252) where the controlled drug in relation to which the offence was committed was a Class B or Class C drug (Magistrates' Courts Act 1980 s 32(5) (a));
- 56 (2) offences under the following provisions of the Misuse of Drugs Act 1971, where the controlled drug in relation to which the offence was committed was a Class C drug: (a) s 4(2) (production, or being concerned in the production, of a controlled drug) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 772; and MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 249); (b) s 4(3) (supplying or offering a controlled drug or being concerned in the doing of either activity by another) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 772; and MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 249); (c) s 5(3) (having possession of a controlled drug with intent to supply it to another) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 772; and MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 252); (d) s 8 (as amended) (being the occupier, or concerned in the management, of premises and permitting or suffering certain activities to take place there) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 777; and MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 255); (e) s 12(6) (contravention of direction prohibiting practitioner etc from possessing, supplying etc controlled drugs) (see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 272); or (f) s 13(3) (contravention of direction prohibiting practitioner etc from prescribing, supplying etc controlled drugs) (see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 273) (Magistrates' Courts Act 1980 s 32(5)(b)).

For these purposes, 'controlled drug', 'Class B drug' and 'Class C drug' have the same meanings as in the Misuse of Drugs Act 1971 s 2(1) (see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 238): Magistrates' Courts Act 1980 s 32(8).



Section 32(2) does not affect so much of any enactment as (in whatever words) makes a person liable on summary conviction to a fine not exceeding a specified amount for each day on which a continuing offence is continued after conviction or the occurrence of any other specified event: s 32(4).

Where, as regards any offence triable either way, there is under any enactment (however framed or worded) a power by subordinate instrument to restrict the amount of the fine which on summary conviction can be imposed in respect of that offence: (i) s 32(2) does not affect that power or override any restriction imposed in the exercise of that power (s 32(6)(a)); and (ii) the amount to which that fine may be restricted in the exercise of that power is any amount less than the maximum fine which could be imposed on summary conviction in respect of the offence apart from any restriction so imposed (s 32(6)(b)). As to the maximum fines under subordinate legislation see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 140-142.

9 See PARA 655 ante. For the meaning of 'statutory maximum' see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 140.

10 In the commencement of the Criminal Justice Act 1988 s 51: see the Criminal Justice Act (Commencement No 2) Order 1988, SI 1988/1676.

11 Criminal Justice Act 1988 s 51(1).

12 As to informations and complaints see PARA 681 post.

13 See the Magistrates' Courts Act 1980 s 127(1); and PARA 589 ante.

## UPDATE

### 656 Penalties on summary conviction of offences triable either way

NOTE 4--Heads (2), (3) omitted: 1980 Act ss 32(1) proviso (b), 45 repealed by Serious Crime Act 2007 Sch 6 para 55(2), (3), Sch 14.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(1) CRIMINAL AND CIVIL JURISDICTION/(i) Criminal Jurisdiction/A. MODE OF TRIAL/657. Initial procedure: accused indicating intention as to plea.

### 657. Initial procedure: accused indicating intention as to plea.

There is an initial procedure<sup>1</sup> where a person who has attained the age of 18 years<sup>2</sup> appears or is brought before a magistrates' court<sup>3</sup> on an information charging him with an offence triable either way<sup>4</sup>. Everything that the court is required to do during these proceedings<sup>5</sup> must be done with the accused present in court<sup>6</sup>.

Under this procedure, the court must cause the charge to be written down, if this has not already been done, and to be read to the accused<sup>7</sup>. The court must then explain to the accused in ordinary language that he may indicate whether (if the offence were to proceed to trial) he would plead guilty or not guilty, and that if he indicates that he would plead guilty<sup>8</sup>: (1) the court will proceed as if the proceedings constituted from the beginning the summary trial of the information<sup>9</sup>, and as if the court had stated to him the substance of the information and asked him whether he pleaded guilty or not guilty and he pleaded guilty under it<sup>10</sup>; and (2) he may be committed for sentence to the Crown Court<sup>11</sup> if the court is of the opinion<sup>12</sup> to commit him<sup>13</sup>. The court must then ask the accused whether (if the offence were to proceed to trial) he would plead guilty or not guilty<sup>14</sup>.

If the accused indicates that he would plead guilty the court must proceed as if: (a) the proceedings constituted from the beginning the summary trial of the information<sup>15</sup>; and (b) the court had stated to him the substance of the information and asked him whether he pleaded guilty or not guilty and he pleaded guilty<sup>16</sup>. If the accused indicates that he would plead not guilty the court must proceed with the initial procedure on information against the accused for

an offence triable either way<sup>17</sup>. If the accused in fact fails to indicate how he would plead<sup>18</sup>, he must be taken to indicate that he would plead not guilty<sup>19</sup>.

The asking of the accused whether (if the offence were to proceed to trial) he would plead guilty or not guilty, or an indication by the accused of how he would plead must not for any purpose be taken to constitute the taking of a plea<sup>20</sup>.

1    Ie under the Magistrates' Courts Act 1980 s 17A (as added): see the text and notes infra.

2    As to a person's age see PARA 738 post.

3    For the meaning of 'magistrates' court' see PARA 583 ante.

4    Magistrates' Courts Act 1980 s 17A(1) (s 17A added by the Criminal Procedure and Investigations Act 1996 s 49(1), (2)). This provision applies where a person appears or is brought before a magistrates' court on or after 1 October 1997, unless he has appeared or been brought before such a court in respect of the same offence on a previous occasion falling before that day: see the Criminal Procedure and Investigations Act 1996 s 49(6), (7); and the Criminal Procedure and Investigations Act 1996 (Appointed Day No 6) Order 1997, SI 1997/2199. For the meaning of 'offence triable either way' see PARA 653 ante. As to the laying of informations see PARA 681 et seq post.

5    Ie under the Magistrates' Courts Act 1980 s 17A (as added).

6    Ibid s 17A(2) (as added: see note 4 supra). As to the procedure for intention as to plea in the accused's absence see PARA 658 post.

7    Ibid s 17A(3) (as added: see note 4 supra). As to the meaning of 'writing' see PARA 507 note 12 ante.

8    Ibid s 17A(4) (as added: see note 4 supra).

9    Ibid s 17A(4)(a), (6)(a) (as added: see note 4 supra).

10   See ibid ss 9(1), 17A(4)(a), (6)(b) (as added: see note 4 supra). See further PARA 726 post.

11   Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 3: see PARA 777 post. For the meaning of 'Crown Court' see PARA 508 note 9 ante.

12   Ie the court is of the opinion: (1) that the offence or the combination of the offence with one or more offences associated with it was so serious that greater punishment should be inflicted for the offence than the court has power to impose (see ibid s 3(2)(a)); or (2) in the case of a violent or sexual offence, that a custodial sentence for a term longer than the court has power to impose is necessary to protect the public from serious harm from him (see s 3(2)(b)). See further PARA 777 post.

13   See the Magistrates' Courts Act 1980 s 17A(4)(b) (as added (see note 4 supra); and amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 62).

As to the factors to be taken into consideration by the court in deciding whether to commit the defendant and the procedure to be adopted in relation to the making of such a decision see *R v Warley Magistrates' Court, ex p DPP, R v Staines Magistrates' Court, ex p DPP, R v North East Suffolk Magistrates' Court, ex p DPP* [1999] 1 All ER 251, [1999] 1 WLR 216, DC. As to committal for sentence see PARA 777 et seq post.

14   Magistrates' Courts Act 1980 s 17A(5) (as added: see note 4 supra).

15   Ibid s 17A(6)(a) (as added: see note 4 supra).

16   See ibid s 9(1), s 17A(6)(b) (as added: see note 4 supra). See further PARA 726 post.

17   See ibid ss 17A(7) (as added: see note 4 supra), 18(1) (as amended). As to the initial procedure see ss 19-23 (as amended); and PARAS 659-662 post.

18   Ie for the purposes of ibid s 17A (as added) and s 18(1) (as amended): see PARA 659 post.

19   Ibid s 17A(8) (as added: see note 4 supra).

20   See ibid s 17A(9) (as added: see note 4 supra) (which is subject to s 17A(6) (as added) (see text and notes 15-16 supra)).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(1) CRIMINAL AND CIVIL JURISDICTION/(i) Criminal Jurisdiction/A. MODE OF TRIAL/658. Initial procedure: absence of accused.

### **658. Initial procedure: absence of accused.**

The following provisions have effect where: (1) a person who has attained the age of 18 years<sup>1</sup> appears or is brought before a magistrates' court<sup>2</sup> on an information charging him with an offence triable either way<sup>3</sup>; (2) the accused is represented by a legal representative<sup>4</sup>; (3) the court considers that by reason of the accused's disorderly conduct before the court it is not practicable for proceedings<sup>5</sup> to be conducted in his presence<sup>6</sup>; and (4) the court considers that it should proceed in the absence of the accused<sup>7</sup>.

In such a case: (a) the court must cause the charge to be written down, if this has not already been done, and to be read to the representative<sup>8</sup>; (b) the court must ask the representative whether (if the offence were to proceed to trial) the accused would plead guilty or not guilty<sup>9</sup>; (c) if the representative indicates that the accused would plead guilty the court must proceed as if the proceedings constituted from the beginning the summary trial of the information, and as if the court had stated to him the substance of the information and asked him whether he pleaded guilty or not guilty and he pleaded guilty under it<sup>10</sup>; and (d) if the representative indicates that the accused would plead not guilty the court must proceed with the initial procedure on information against the accused for an offence triable either way<sup>11</sup>.

If the representative in fact fails to indicate how the accused would plead<sup>12</sup>, he must be taken to indicate that the accused would plead not guilty<sup>13</sup>. Subject to head (c) above, the taking of a plea asking the representative whether (if the offence were to proceed to trial) the accused would plead guilty or not guilty or an indication by the representative how the accused would plead must not for any purpose be taken to constitute the taking of a plea<sup>14</sup>.

1 As to a person's age see PARA 738 post.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 Magistrates' Courts Act 1980 s 17B(1)(a) (s 17B added by the Criminal Procedure and Investigations Act 1996 s 49(1), (2)). This provision applies where a person appears or is brought before a magistrates' court on or after 1 October 1997, unless he has appeared or been brought before such a court in respect of the same offence on a previous occasion falling before that day: see the Criminal Procedure and Investigations Act 1996 s 49(6), (7); and the Criminal Procedure and Investigations Act 1996 (Appointed Day No 6) Order 1997, SI 1997/2199. For the meaning of 'offence triable either way' see PARA 653 ante. As to the laying of informations see PARA 681 et seq post.

4 Magistrates' Courts Act 1980 s 17B(1)(b) (as added: see note 3 supra). 'Legal representative' means an authorised advocate or authorised litigator as defined by the Courts and Legal Services Act 1990 s 119(1) (see LEGAL PROFESSIONS vol 65 (2008) PARAS 497-498); definition applied by the Magistrates' Courts Act 1980 s 150(1) (definition added by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 25(1), (2)).

5 Ie under the Magistrates' Courts Act 1980 s 17A (as added): see PARA 657 ante.

6 Ibid s 17B(1)(c) (as added: see note 3 supra).

7 Ibid s 17B(1)(d) (as added: see note 3 supra).

8 Ibid s 17B(2)(a) (as added: see note 3 supra). As to the meaning of 'writing' see PARA 507 note 12 ante.

9 Ibid s 17B(2)(b) (as added: see note 3 supra).

10 See ibid ss 9(1), 17B(2)(c) (as added: see note 3 supra). See further PARA 726 post.

11 See *ibid* ss 17B(2)(d) (as added: see note 3 *supra*), 18(1) (as amended). As to the initial procedure see ss 19-23 (as amended); and PARAS 659-662 *post*.

12 *Ie* for the purposes of *ibid* s 17B (as added) and s 18(1) (as amended): see PARA 659 *post*.

13 *Ibid* s 17B(3) (as added: see note 3 *supra*).

14 *Ibid* s 17B(4) (as added: see note 3 *supra*).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(1) CRIMINAL AND CIVIL JURISDICTION/(i) Criminal Jurisdiction/A. MODE OF TRIAL/659. Mode of trial proceedings for offences triable either way.

### **659. Mode of trial proceedings for offences triable either way.**

There is a single procedure<sup>1</sup> for determining the mode of trial where a person who has attained the age of 18 years<sup>2</sup> appears or is brought before a magistrates' court<sup>3</sup> on an information charging him with an offence triable either way<sup>4</sup> and: (1) he indicates<sup>5</sup> that (if the offence were to proceed to trial) he would plead not guilty; or (2) his representative indicates<sup>6</sup> that (if the offence were to proceed to trial) he would plead not guilty<sup>7</sup>. Everything that the court is required to do<sup>8</sup> must be done before any evidence is called, and generally<sup>9</sup> with the accused present in court<sup>10</sup>.

The court<sup>11</sup> must afford first the prosecutor and then the accused an opportunity to make representations as to which mode of trial would be more suitable<sup>12</sup>. The court must then consider whether the offence appears to the court more suitable for summary trial or for trial on indictment<sup>13</sup>, having regard to any representations made by the prosecutor or the accused<sup>14</sup>, and having regard to: (a) the nature of the case<sup>15</sup>; (b) whether the circumstances make the offence one of serious character<sup>16</sup>; (c) whether the punishment which a magistrates' court would have power to inflict for it would be adequate<sup>17</sup>; and (d) any other circumstances which appear to the court to make it more suitable for the offence to be tried in one way rather than the other<sup>18</sup>.

If it appears to the court<sup>19</sup> that the offence is more suitable for trial on indictment, the court must tell the accused that it has decided that it is more suitable for him to be tried for the offence by a jury, and must proceed to inquire into the information as examining justices<sup>20</sup>. If, on the other hand, it appears to the court<sup>21</sup> that the offence is more suitable for summary trial<sup>22</sup> the court must explain to the accused in ordinary language<sup>23</sup>: (i) that it appears to the court more suitable for him to be tried summarily for the offence, and that he can either consent to be so tried or, if he wishes, be tried by a jury<sup>24</sup>; and (ii) that if he is tried summarily and is convicted by the court, he may be committed for sentence<sup>25</sup> to the Crown Court<sup>26</sup> if the convicting court is of the opinion<sup>27</sup> to commit him<sup>28</sup>. After explaining this to the accused<sup>29</sup> the court must ask him whether he consents to be tried summarily or wishes to be tried by a jury<sup>30</sup> and (A) if he consents<sup>31</sup> to be tried summarily, proceed to the summary trial of the information<sup>32</sup>; or (B) if he does not so consent, proceed to inquire into the information as examining justices<sup>33</sup>.

If the prosecution is being carried on by the Attorney General<sup>34</sup>, the Solicitor General<sup>35</sup> or the Director of Public Prosecutions<sup>36</sup> and he applies for the offence to be tried on indictment, the court must proceed to inquire into the information as examining justices<sup>37</sup>.

1 *Ie* the procedure under the Magistrates' Courts Act 1980 ss 18-23 (as amended): see the text and notes *infra*; and PARAS 660-662 *post*.

2 As to a person's age see PARA 738 *post*.

3 For the meaning of 'magistrates' court' see PARA 583 *ante*.

4 For the meaning of 'offence triable either way' see PARA 653 ante. As to the laying of informations see PARA 681 et seq post.

5 Ie under the Magistrates' Courts Act 1980 s 17A (as added): see PARA 657 ante.

6 Ie under ibid s 17B (as added): see PARA 658 ante.

7 Ibid s 18(1) (amended by the Criminal Justice Act 1991 s 68, Sch 8 para 6(1)(a); and the Criminal Procedure and Investigations Act 1996 s 49(1), (3)). The Magistrates' Courts Act 1980 ss 18, 19 (both as amended) apply where a person appears or is brought before a magistrates' court on or after 1 October 1997, unless he has appeared or been brought before such a court in respect of the same offence on a previous occasion falling before that day: see the Criminal Procedure and Investigations Act 1996 s 49(6), (7); and the Criminal Procedure and Investigations Act 1996 (Appointed Day No 6) Order 1997, SI 1997/2199.

In the absence of an abuse of process of the court, the prosecution is entitled to decide not to proceed with a charge which is triable summarily or on indictment, even though the defendant has elected to go for trial at the Crown Court on that charge, and is entitled to prefer a lesser charge which is triable only summarily: *R v Canterbury and St Augustine's Justices, ex p Klisiak, R v Ramsgate Justices, ex p Warren* [1982] QB 398, [1981] 2 All ER 129, DC. Justices have power to add a summons triable only on indictment where a defendant wishes to be tried summarily on an extant summons triable either way, unless it is *Wednesbury* unreasonable to do so: *R v Redbridge Justices and Fox, ex p Whitehouse* (1991) 94 Cr App Rep 332, (1991) 156 JP 293, DC. As to *Wednesbury* unreasonableness see JUDICIAL REVIEW vol 61 (2010) PARA 617.

8 Ie under the Magistrates' Courts Act 1980 ss 19-22 (as amended).

9 Ie subject to ibid s 18(3) and s 23 (as amended): see PARA 662 post.

10 Ibid s 18(2) (which is expressed to be without prejudice to s 11(1) (non-appearance of accused) (see PARA 701 post)). See further PARA 662 post.

11 The functions of a magistrates' court under ibid ss 19-23 (as amended) (see the text and notes infra; and PARAS 661-662 post) may be discharged by a single justice, but this must not be taken to authorise the summary trial of an information by a magistrates' court composed of less than two justices: s 18(5).

12 Ibid s 19(2)(b). Sections 19-21 (as amended) are excluded in the case of certain offences where the value involved is small: see s 22(2); and PARA 661 post.

13 Ibid s 19(1). See note 12 supra. As to the procedure where summary trial appears more suitable see s 20 (as amended); and notes 22-30 infra.

14 Ibid s 19(1). See note 12 supra. For the meaning of 'Crown Court' see PARA 508 note 9 ante.

15 Ibid s 19(1), (3). See note 12 supra.

16 Ibid s 19(1), (3). See note 12 supra. Where an offence is of a serious character it ought to go to the Crown Court for trial: *R v Norfolk Justices, ex p DPP* [1950] 2 KB 558 at 567, sub nom *R v South Greenhoe Justices, ex p DPP* [1950] 2 All ER 42 at 44-45, DC, per Lord Goddard CJ; *R v Coe* [1969] 1 All ER 65 at 67, [1968] 1 WLR 1950 at 1953, CA, per Lord Parker CJ (both cases referring to the former court of quarter sessions). Offences involving a system of large-scale thieving and receiving should not be dealt with summarily: *R v Pitson* (1972) 56 Cr App Rep 391 at 394, [1972] Crim LR 384, CA, per Lawton LJ.

17 Magistrates' Courts Act 1980 s 19(1), (3). See note 12 supra. The fact that the accused has previous convictions must not be disclosed to the court at this stage: *R v Colchester Justices, ex p North Essex Building Co Ltd* [1977] 3 All ER 567, [1977] 1 WLR 1109, DC. See also *R v Flax Bourton Magistrates, ex p Customs and Excise Comrs* (1996) 160 JP 481, [1996] Crim LR 907, DC (despite the magistrates' unfettered discretion to commit for sentence to the Crown Court under the Magistrates' Courts Act 1980 s 38 (repealed; see now the Powers of Criminal Courts (Sentencing) Act 2000 s 3; and PARA 777 post), they must still take full account of the Magistrates' Courts Act 1980 s 19(3) in deciding the mode of trial); and *R v Derby Justices, ex p DPP* (1999) Times, 17 August, DC (lenient maximum sentence was not one that no reasonable bench of magistrates could properly impose).

18 Magistrates' Courts Act 1980 s 19(1), (3). See note 12 supra.

19 Ie after having considered the issues as required under ibid s 19(1): see the text and notes 13-18 supra.

20 Ibid s 21. See note 12 supra. As to the use of the expression 'examining justices' see PARA 524 note 9 ante. As to the laying of an information see PARA 681 et seq post.

21 le after having considered the issues as required under *ibid* s 19(1): see the text and notes 13-18 *supra*.

22 *Ibid* s 20(1). See note 12 *supra*.

23 *Ibid* s 20(2). See note 12 *supra*.

24 *Ibid* s 20(2)(a). See note 12 *supra*. To be entitled to elect trial by jury the defendant must have attained the age of 18 years on the date on which he appears or is brought before the court when it decides on the mode of trial; he may have been under the age of 18 years on his first court appearance: *R v Islington North Juvenile Court, ex p Daley* [1983] 1 AC 347, sub nom *Re Daley* [1982] 2 All ER 974, HL, applying *R v St Albans Juvenile Court, ex p Godman* [1981] QB 964, [1981] 2 All ER 311, DC, and disapproving *R v Amersham Juvenile Court, ex p Wilson* [1981] QB 969, [1981] 2 All ER 315, DC. *R v Amersham Juvenile Court, ex p Wilson* *supra* was followed in *R v Uxbridge Youth Court, ex p Howard* (1998) 162 JP 327. See also *R v Lewes Juvenile Court, ex p Turner* (1984) 149 JP 186, DC; *R v Nottingham Justices, ex p Taylor* [1992] QB 557, [1991] 4 All ER 860, DC; and *R v West London Justices, ex p Siley-Winditt* [2000] Crim LR 926, DC.

Where a number of defendants before justices are jointly charged with an offence, the right of election as to the mode of trial must be given to each defendant individually: *R v Brentwood Justices, ex p Nicholls* [1992] 1 AC 1, sub nom *Nicholls v Brentwood Justices* [1991] 3 All ER 359, HL. It has been held that it is not a proper exercise of the justices' discretion to seek to circumvent the decision in *R v Brentwood Justices, ex p Nicholls* *supra*, to prevent trials in separate venues: *R v West Norfolk Justices, ex p McMullen* (1992) 157 JP 461, DC.

Where some co-defendants elect for Crown Court trial and another consents to summary trial, magistrates cannot decide that the case is unsuitable for summary trial merely in order to avoid the co-defendants being tried in different courts: *R v Ipswich Magistrates' Court, ex p Callaghan* (1995) 159 JP 748, (1995) Times, 3 April, DC.

25 'Sentence' does not include a committal in default of payment of any sum of money, or for want of sufficient distress to satisfy any sum of money, or for failure to do or abstain from doing anything required to be done or left undone: Magistrates' Courts Act 1980 s 150(1).

26 le under the Powers of Criminal Courts (Sentencing) Act 2000 s 3: see PARA 777 post. For the meaning of 'Crown Court' see PARA 508 note 9 *ante*.

27 le under *ibid* s 3(2): see PARA 657 *ante*. As to the opinion of the convicting court see PARA 657 note 12 *ante*.

28 See the Magistrates' Courts Act 1980 s 20(2)(b) (amended by the Criminal Justice Act 1991 s 100, Sch 11 para 25; and the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 63). See note 12 *supra*. For guidelines to help magistrates decide whether to commit 'either way' offences for trial in the Crown Court see the *National Mode of Trial Guidelines 1995*.

A committal to the Crown Court for sentence will be invalid if an explanation under what is now the Magistrates' Courts Act 1980 s 20(2)(b) (as amended) is not given: *R v Kent Justices, ex p Machin* [1952] 2 QB 355, [1952] 1 All ER 1123, DC; *R v Newcastle-under-Lyme Justices, ex p Whitehouse* [1952] 2 All ER 531n, 96 Sol Jo 596, DC.

29 le under the Magistrates' Courts Act 1980 s 20(2): see the text and notes 23-28 *supra*.

30 *Ibid* s 20(3). See note 12 *supra*.

31 It may be sufficient if counsel for the accused consents provided the accused is informed in clear words of his right to jury trial: *R v Latham, ex p Roberts* (1943) 41 LGR 99, DC. The consent may be withdrawn before evidence is given: *R v Craske, ex p Metropolitan Police Comr* [1957] 2 QB 591, [1957] 2 All ER 772, DC; *R v Ibrahim* (1957) 122 JP 119, (1957) 42 Cr App Rep 38, CCA. But the decision to allow the accused to withdraw his consent is within the court's discretion: *R v Southampton City Justices, ex p Briggs* [1972] 1 All ER 573 at 575, [1972] 1 WLR 277 at 280, DC, per Lord Widgery CJ. See also *R v Bennett, ex p R* [1960] 1 All ER 335, [1960] 1 WLR 102, DC; and *R v Lambeth Metropolitan Stipendiary Magistrate, ex p Wright* [1974] Crim LR 444, DC. When a case is remitted to the justices for hearing *de novo*, they have a discretion to allow the accused to withdraw his consent to summary trial: *R v Bradfield and Sonning Justices, ex p Jones* [1976] RTR 144, (1975) 119 Sol Jo 679, DC. The cases cited above were all decided under previous legislation.

Where magistrates conclude that it is a proper case in which to allow the withdrawal of a plea of guilty, the accused must be given the right to consider whether or not to consent to summary trial afresh: *R v Bow Street Magistrates' Court, ex p Welcome* (1992) 156 JP 609, (1992) 136 Sol Jo LB 140, DC. When considering such an application, a central factor is the state of mind of the defendant when he made his election; whether he had properly understood the nature and significance of the choice which he had made when he elected for summary trial: *R v Birmingham Justices, ex p Hodgson* [1985] QB 1131, [1985] 2 All ER 193, DC; and see *R v West London Stipendiary Magistrate, ex p Keane* (1992) 156 JP 612, DC. The age of the accused is a material factor in the proper exercise of discretion: *R v Highbury Corner Metropolitan Stipendiary Magistrate, ex p Weekes* [1985] QB 1147, [1985] 2 WLR 643, DC (the accused was 17 years old and had never been in a court of law before). If the

defendant understood the choice he was asked to make, the justices are not obliged to investigate the reasons for that choice or any legal advice that was received: *R v Bourne Justices, ex p Cope* (1988) 153 JP 161, DC. Justices hearing an application to re-elect on the basis that the accused did not understand what he was doing when he elected the mode of trial, and who were not present on the occasion when the election was made, should receive evidence as to what happened in the court when the election was made from the court clerk present on that occasion: *R v Forest Magistrates' Court, ex p Spicer* [1988] Crim LR 619, 153 JP 81, DC.

In third party proceedings each party must be given the right to elect the mode of trial: *R v Uxbridge Justices, ex p Gow, R v Uxbridge Justices, ex p Co-operative Retail Services* (1985) 84 LGR 374, (1985) 150 JP 154, DC.

Where a court tries any person summarily in a case in which he may be tried summarily only with his consent, the court must cause his consent to be entered in the register, and, if the consent is signified by a person representing him in his absence, the court must also cause that fact to be entered in the register: Magistrates' Courts Rules 1981, SI 1981/552, r 66(5). As to the duty to keep the register see PARA 628 ante.

32 Magistrates' Courts Act 1980 s 20(3)(a). In a summary trial, justices have a discretion to order a case to be tried by a differently constituted bench where they consider a public interest immunity claim and decide that the material is inadmissible: *R v South Worcestershire Magistrates, ex p Lilley* [1995] 4 All ER 186, [1995] 1 WLR 1595, DC. However, this discretion should be exercised only in rare and exceptional cases, such as where evidence which has been ruled inadmissible is of a highly prejudicial nature, and, in general where possible, the same court which rules on disclosure should proceed to conduct the trial: *R v Stipendiary Magistrate for Norfolk, ex p Taylor* (1997) 161 JP 773, DC. See also *R v Bromley Magistrates' Court, ex p Smith* [1995] 4 All ER 146, [1995] 1 WLR 944, DC; *R (on the application of DPP) v Acton Youth Court* [2001] EWHC Admin 402, [2001] 1 WLR 1828, DC.

33 Magistrates' Courts Act 1980 s 20(3)(b).

34 As to Her Majesty's Attorney General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 529 et seq.

35 As to the Solicitor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 529.

36 The power of the Director of Public Prosecutions under the Magistrates' Courts Act 1980 s 19(4) to apply for an offence to be tried on indictment must not be exercised except with the consent of the Attorney General: s 19(5) (added by the Prosecution of Offences Act 1985 s 31(5), Sch 1 para 2). As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

37 Magistrates' Courts Act 1980 s 19(4). In these circumstances ss 19(1)-(3), 20 (both as amended) and s 21 do not apply: see s 19(4).

## UPDATE

### 659 Mode of trial proceedings for offences triable either way

NOTE 36--Magistrates' Courts Act 1980 s 19(5) amended: Armed Forces Act 2006 Sch 16 para 88.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(1) CRIMINAL AND CIVIL JURISDICTION/(i) Criminal Jurisdiction/A. MODE OF TRIAL/660. Mode of trial proceedings for summary offences where the person is committed to the Crown Court for trial on indictment.

### 660. Mode of trial proceedings for summary offences where the person is committed to the Crown Court for trial on indictment.

A count charging a person with any of the following summary offences<sup>1</sup>:

- 143 (1) common assault<sup>2</sup>;
- 144 (2) assaulting a prisoner custody officer<sup>3</sup>;
- 145 (3) assaulting a secure training centre custody officer<sup>4</sup>;

- 146 (4) taking a motor vehicle or other conveyance without authority<sup>5</sup>;
- 147 (5) driving a motor vehicle while disqualified<sup>6</sup>;
- 148 (6) certain minor offences of criminal damage<sup>7</sup>;
- 149 (7) any summary offence that the Secretary of State<sup>8</sup> may by order made by statutory instrument specify<sup>9</sup> which is punishable with imprisonment or involves obligatory or discretionary disqualification from driving<sup>10</sup>,

may be included in an indictment if the charge is founded on the same facts or evidence as a count charging an indictable offence<sup>11</sup>, or is part of a series of offences of the same or similar character as an indictable offence which is also charged, but only if (in either case) the facts or evidence relating to the offence were disclosed to a magistrates' court<sup>12</sup> inquiring into the offence as examining justices<sup>13</sup> or are disclosed by material which<sup>14</sup> has been served on the person charged<sup>15</sup>.

Where a count charging a summary offence<sup>16</sup> is included in an indictment, the offence is to be tried in the same manner as if it were an indictable offence, but the Crown Court<sup>17</sup> may only deal with the offender in respect of it in a manner in which a magistrates' court could have dealt with him<sup>18</sup>.

Where a magistrates' court commits a person to the Crown Court for trial<sup>19</sup> on indictment for an offence triable either way<sup>20</sup> or a number of such offences, it may also commit him for trial for any summary offence with which he is charged and which:

- 150 (a) is punishable with imprisonment or involves obligatory or discretionary disqualification from driving<sup>21</sup>; and
- 151 (b) arises out of circumstances which appear to the court to be the same as or connected with those giving rise to the offence, or one of the offences, triable either way<sup>22</sup>,

whether or not evidence relating to that summary offence appears on the depositions or written statements in the case; and the trial of the information<sup>23</sup> charging the summary offence must then be treated as if the magistrates' court had adjourned it<sup>24</sup> and had not fixed the time and place for its resumption<sup>25</sup>. A magistrates' court's decision to exercise the power<sup>26</sup> to commit a person to the Crown Court for trial for a summary offence where the person is also committed for trial to the Crown Court for an offence triable either way or a number of such offences is not subject to appeal or liable to be questioned in any court<sup>27</sup>.

Where a magistrates' court commits a person to the Crown Court for trial on indictment for a number of offences triable either way and exercises the power to commit him for trial for any summary offence with which he is charged<sup>28</sup>, the magistrates' court must give both the Crown Court and the person committed for trial a notice stating which of the offences triable either way appears to the court to arise out of circumstances which are the same as or connected with those giving rise to the summary offence<sup>29</sup>.

1 Criminal Justice Act 1988 s 40(1). For the meaning of 'summary offence' see PARA 653 ante.

2 Ibid s 40(3)(a). As to the offence of common assault see s 39; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 148. In s 40 (as amended) this offence includes battery as well as technical assault: see *R v Lynsey* [1995] 3 All ER 654, [1995] 2 Cr App Rep 667, CA.

3 Criminal Justice Act 1988 s 40(3)(aa) (added by the Criminal Justice and Public Order Act 1994 s 168(1), Sch 9 para 35). The offence referred to in the text is that under the Criminal Justice Act 1991 s 90(1) (as amended): see PRISONS vol 36(2) (Reissue) PARA 528.

4 Criminal Justice Act 1988 s 40(3)(ab) (added by the Criminal Justice and Public Order Act 1994 Sch 9 para 35). The offence referred to in the text is that under the Criminal Justice and Public Order Act 1994 s 13(1): see PRISONS vol 36(2) (Reissue) PARA 670.



5 Criminal Justice Act 1988 s 40(3)(b). The offences referred to in the text are those under the Theft Act 1968 s 12(1): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 298.

6 Criminal Justice Act 1988 s 40(3)(c) (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 3 para 39). The offence referred to in the text is that under the Road Traffic Act 1988 s 103(1)(b) (as substituted): see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 481.

7 Criminal Justice Act 1988 s 40(3)(d). The offences referred to in the text are those mentioned in the Magistrates' Courts Act 1980 Sch 2 col 1 (as amended) (criminal damage etc) which would otherwise be triable only summarily by virtue of s 22(2): see PARA 661 post.

8 As to the Secretary of State see PARA 530 note 8 ante.

9 Ie for the purposes of the Criminal Justice Act 1988 s 40 (as amended).

10 Ibid s 40(3)(e), (4). At the date at which this volume states the law no such orders had been made. A statutory instrument containing an order under s 40 (as amended) is subject to annulment in pursuance of a resolution of either House of Parliament: s 40(5).

11 For the meaning of 'indictable offence' see PARA 653 ante. As to what may amount to the same facts or evidence see *R v Bird* [1995] Crim LR 745, [1996] RTR 22, CA (driving while disqualified with an offensive weapon in the car were two offences founded on the same facts and evidence). The offence must be linked to an indictable offence and not another summary offence: *R v Callaghan* (1991) 155 JP 965, [1992] Crim LR 191, CA. Driving a conveyance taken without authority and driving while disqualified are not offences of a similar character to dangerous driving and they cannot therefore be joined in an indictment under the Criminal Justice Act 1988 s 40 (as amended): see *R v Smith* [1997] QB 836, [1997] 2 WLR 588, CA.

12 For the meaning of 'magistrates' court' see PARA 583 ante.

13 As to the use of the expression 'examining justices' see PARA 524 note 9 ante.

14 Ie in pursuance of regulations made under the Crime and Disorder Act 1998 s 52(6), Sch 3 para 1 (as amended) (procedure where persons are sent for trial under s 51): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1138-1141.

15 Criminal Justice Act 1988 s 40(1) (amended by the Criminal Procedure and Investigations Act 1996 s 47, Sch 1 paras 34, 39; and the Crime and Disorder Act 1998 s 119, Sch 8 para 66). Purely summary offences may only be tried on indictment where the Criminal Justice Act 1988 s 40 (as amended) applies: *R v T* [2001] 1 Cr App Rep 32, (2000) 165 JP 306, CA (where the Criminal Justice Act 1988 s 40 did not apply to a transfer under the Criminal Justice Act 1991 s 53 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1211), the court had no jurisdiction to deal with the matter).

16 Ie under heads (1)-(7) in the text.

17 For the meaning of 'Crown Court' see PARA 508 note 9 ante.

18 Criminal Justice Act 1988 s 40(2). Section 41 allows an offender to be sentenced for a summary offence at the end of the Crown Court trial for a linked offence triable either-way: see the text and notes 19-29 infra.

19 'Committed for trial' means: (1) in relation to England and Wales, committed in custody or on bail by a magistrates' court pursuant to the Magistrates' Courts Act 1980 s 6 (as amended) (see PARA 676 post) or by any judge or other authority having power to do so, with a view to trial before a judge and jury; and (2) in relation to Northern Ireland, committed in custody or on bail by a magistrates' court pursuant to the Magistrates' Courts (Northern Ireland) Order 1981, SI 1981/1675 (NI 26), art 37, or by a court, judge, resident magistrate, justice of the peace or other authority having power to do so, with a view to trial on indictment: Interpretation Act 1978 s 5, Sch 1 (amended by the Magistrates' Courts Act 1980 s 154, Sch 7 para 169(a); and the Magistrates' Courts (Northern Ireland) Order 1981, SI 1981/1675 (NI 26), art 170(2), Sch 6 Pt 1 para 56(a)). For the meaning of 'England' see PARA 501 note 7 ante; and for the meaning of 'Wales' see PARA 501 note 7 ante.

20 For the meaning of 'offence triable either way' see PARA 653 ante.

21 Criminal Justice Act 1988 s 41(1)(a).

22 Ibid s 41(1)(b).

23 As to the laying of informations see PARA 681 et seq post.

24 le under the Magistrates' Courts Act 1980 s 10 (as amended): see PARA 707 post.

25 Criminal Justice Act 1988 s 41(1). The committal of a person under s 41 (as amended) in respect of an offence to which s 40 (as amended) applies does not preclude the prosecution from relying on s 40 (as amended) to include in the indictment a count for the summary offence, but if they do so, the functions of the Crown Court under s 41 (as amended) in relation to that offence cease: s 41(4).

There is no power under s 41 (as amended) to commit a summary offence for trial at the Crown Court together with an offence triable only on indictment: *R v Miall* [1992] QB 836, [1992] 3 All ER 153, CA.

26 le the power conferred by the Criminal Justice Act 1988 s 41(1): see the text and notes 19-25 supra.

27 Ibid s 41(3).

28 le under ibid s 41(1): see the text and notes 19-25 supra.

29 Ibid s 41(2). As to the power of the Crown Court to deal with summary offences where a person is committed for an either way offence see further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1358; vol 11(4) (2006 Reissue) PARA 1885.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(1) CRIMINAL AND CIVIL JURISDICTION/(i) Criminal Jurisdiction/A. MODE OF TRIAL/661. Minor offences of criminal damage triable either way to be tried summarily.

### **661. Minor offences of criminal damage triable either way to be tried summarily.**

There is a separate procedure for determining the mode of trial in the case of a person aged 18<sup>1</sup> or over accused of any of the following minor offences of criminal damage (known as 'the scheduled offences')<sup>2</sup>:

- 152 (1) destroying or damaging property, excluding any offence committed by destroying or damaging property by fire<sup>3</sup>;
- 153 (2) aiding, abetting, counselling or procuring the commission of any offence mentioned in head (1) above<sup>4</sup>;
- 154 (3) attempting to commit any offence mentioned in head (1) above<sup>5</sup>;
- 155 (4) inciting another to commit any offence mentioned in head (1) above<sup>6</sup>; and
- 156 (5) aggravated vehicle-taking<sup>7</sup>.

The court must, before proceeding to consider which mode of trial appears more suitable<sup>8</sup>, consider whether, having regard to any representations<sup>9</sup> made by the prosecutor or the accused, the value involved<sup>10</sup> appears to the court to exceed the relevant sum<sup>11</sup>. Where the accused is jointly charged with a person who has not attained the age of 18, that person may also make representations<sup>12</sup>. Where (a) the accused is charged on the same occasion with two or more scheduled offences and it appears to the court that they constitute or form part of a series of two or more offences of the same or similar character<sup>13</sup>; or (b) the offence charged consists in incitement to commit two or more scheduled offences<sup>14</sup>, this procedure<sup>15</sup> has effect as if any reference in it to the value involved were a reference to the aggregate of the values involved<sup>16</sup>.

Where it appears to the court clear that, for the offence charged, the value involved does not exceed the relevant sum, the court must proceed as if the offence were triable only summarily<sup>17</sup>. Where it appears to the court clear that, for the offence charged, the value involved exceeds the relevant sum, the court must proceed to consider which mode of trial appears more suitable in the ordinary way<sup>18</sup>.

If, however, it appears to the court for any reason not clear whether, for the offence charged, the value involved does or does not exceed the relevant sum<sup>19</sup>, the court must cause the charge to be written down, if this has not already been done, and read to the accused, and must explain to him, in ordinary language<sup>20</sup>: (i) that he can, if he wishes, consent to be tried summarily for the offence and that if he consents to be so tried, he will definitely be tried in that way<sup>21</sup>; and (ii) that if he is tried summarily and is convicted by the court, his liability to imprisonment and a fine will be limited<sup>22</sup>. After so explaining, the court must ask him whether he consents<sup>23</sup> to be tried summarily<sup>24</sup> and (A) if he so consents, must proceed<sup>25</sup> as if the offence were triable only summarily<sup>26</sup>; and (B) if he does not so consent, must proceed<sup>27</sup> to consider which mode of trial appears more suitable in the ordinary way<sup>28</sup>.

In certain circumstances, specified summary offences, including certain minor offences of criminal damage, may be included as additional counts when a more serious charge is tried on indictment<sup>29</sup>.

Where a person is convicted by a magistrates' court of a scheduled offence, it is not open to him to appeal to the Crown Court<sup>30</sup> against the conviction on the ground that the convicting court's decision as to the value involved was mistaken<sup>31</sup>.

1 As to a person's age see PARA 738 post.

2 'Scheduled offence' means an offence mentioned in the Magistrates' Courts Act 1980 Sch 2 col 1 (as amended) (see heads (1)-(5) in the text): s 22(1) (amended by the Criminal Justice and Public Order Act 1994 s 168(3), Sch 11).

3 Magistrates' Courts Act 1980 s 22(1), Sch 2 para 1 col 1. The offences referred to in the text are those under the Criminal Damage Act 1971 s 1: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 334.

4 Magistrates' Courts Act 1980 Sch 2 para 2(a) col 1. As to aiding, abetting, counselling or procuring the commission of any offence see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 49 et seq.

5 Ibid Sch 2 para 2(b) col 1. As to attempts to commit crimes see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 79 et seq.

6 Ibid Sch 2 para 2(c) col 1. As to incitement to commit crimes see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 65.

7 Ibid Sch 2 para 3 col 1 (Sch 2 para 3 added by the Aggravated Vehicle-Taking Act 1992 s 2(1)). The offences referred to in the text are those under the Theft Act 1968 s 12A (as added) where no allegation is made under s 12A(1)(b) (as added) other than of damage, whether to the vehicle or other property or both: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 299.

8 In accordance with the Magistrates' Courts Act 1980 s 19 (as amended): see PARA 659 ante.

9 As to the meaning of representations see *R v Canterbury and St Augustine's Justices, ex p Klisiak* [1981] 2 All ER 129, [1981] 3 WLR 60.

10 'The value involved' means the value indicated in the Magistrates' Courts Act 1980 Sch 2 col 2 (as amended), measured as indicated in Sch 2 col 3 (as amended): s 22(10). As regards property alleged to have been destroyed, this is its value measured by what the property would probably have cost to buy in the open market at the material time: Sch 2 para 1 cols 2, 3. As regards property alleged to have been damaged, the value of the alleged damage measured either (1) if immediately after the material time the damage was capable of repair what would probably then have been the market price for the repair of the damage, or what the property alleged to have been damaged would probably have cost to buy in the open market at the material time, whichever is the less (Sch 2 para 1(a) col 3); or (2) if immediately after the material time the damage was beyond repair, what the property would probably have cost to buy in the open market at the material time (Sch 2 para 1(b) col 3).

As regards offences of aiding, abetting, counselling, procuring, attempting or inciting the offences in Sch 2 para 1 col 1 (see head (1) in the text), the value involved is the value indicated in Sch 2 para 1 col 2, measured as for the corresponding entry in Sch 2 para 1 col 3: Sch 2 para 2 cols 2, 3.

As regards offences of aggravated vehicle-taking, the total value of the damage alleged to have been caused (Sch 2 para 3 col 2 (as added: see note 7 supra)) measured: (a) in the case of damage to any property other

than the vehicle involved in the offence, as for the corresponding entry in Sch 2 para 1 col 3 (Sch 2 para 3(1) col 3 (as so added)); or (b) in the case of damage to the vehicle involved in the offence:

- 57 (i) if immediately after the vehicle was recovered the damage was capable of repair: (A) what would probably then have been the market price for the repair of the damage (Sch 2 para 3(2)(a) (i) col 3 (as so added)); or (B) what the vehicle would probably have cost to buy in the open market immediately before it was unlawfully taken, which is the less (Sch 2 para 3(2)(a)(ii) col 3 (as so added)); or
- 58 (ii) if immediately after the vehicle was recovered the damage was beyond repair, what the vehicle would probably have cost to buy in the open market immediately before it was unlawfully taken (Sch 2 para 3(2)(b) col 3 (as so added)).

A vehicle is recovered when it is restored to its owner or to other lawful possession or custody: Theft Act 1968 s 12A(8) (s 12A added by the Aggravated Vehicle-Taking Act 1992 s 1(1)); Magistrates' Courts Act 1980 s 22(12) (added by the Aggravated Vehicle-Taking Act 1992 s 2(2)). 'Owner', in relation to a conveyance which is the subject of a hiring agreement or hire-purchase agreement, means the person in possession of the conveyance under that agreement: Theft Act 1968 ss 12(7)(b), 12A(8) (as so added); Magistrates' Courts Act 1980 s 22(12) (as so added).

In determining the value of property, the court must concern itself only with the value in the open market at the material time; losses consequential to the criminal damage are irrelevant: *R v Colchester Magistrates' Court, ex p Abbott* [2001] EWHC Admin 136, 165 JP 386, DC.

'The material time' means the time of the alleged offence: Magistrates' Courts Act 1980 s 22(10). In the case of Sch 2 para 3(1) col 3 (see head (a) supra) 'the material time' means the time of the accident: s 22(10), Sch 2 para 3(1) col 3 (as so added).

11 Ibid s 22(1). For these purposes 'the relevant sum' is £5,000: s 22(1) (amended by the Criminal Justice and Public Order Act 1994 s 46(1)). If it appears to the Secretary of State that there has been a change in the value of money since the relevant date, he may by order substitute for the sum in the definition of 'the relevant sum' in the Magistrates' Courts Act 1980 s 22(1) (as amended) such other sum or sums as appear to him justified by the change: s 143(1) (substituted by the Criminal Justice Act 1982 s 48(1)(a)), Magistrates' Courts Act 1980 s 143(2)(a). As to the position where the value involved does not exceed the relevant sum see the text and note 17 infra. As to the Secretary of State see PARA 530 note 8 ante. For the meaning of 'relevant date' see PARA 656 note 3 ante. As to the making of orders under s 143(1) (as substituted) see PARA 656 note 3 ante. At the date at which this volume states the law no such orders had been made.

The court must enter in the register its decision as to the value involved or the fact that it is unable to reach a decision: see the Magistrates' Courts Rules 1981, SI 1981/552, r 66(7). As to the duty to keep the register see PARA 628 ante.

12 See the Magistrates' Courts Act 1980 s 22(9) (amended by the Criminal Justice Act 1991 s 68, Sch 8 para 6(1)(a), (b)).

13 Magistrates' Courts Act 1980 s 22(11)(a) (s 22(11) added by the Criminal Justice Act 1988 s 38(3)).

See *R v St Helens Justices, ex p McClorie* [1983] 1 WLR 1332, 78 Cr App Rep 1, DC (minor offences of criminal damage triable either way and therefore similar in law). The following two cases, which were decided under the Criminal Law Act 1977 s 23 (now repealed), may still be of relevance in determining whether offences are linked: *R v Tottenham Justices, ex p Tibble* (1981) 73 Cr App Rep 55, [1981] Crim LR 630, DC (offence of common assault not of a similar character to offence of criminal damage); *R v Hatfield Justices, ex p Castle* [1980] 3 All ER 509, [1981] 1 WLR 217, DC (offences must all be triable summarily or on indictment).

14 Magistrates' Courts Act 1980 s 22(11)(b) (as added: see note 13 supra).

15 Ie under ibid s 22 (as amended).

16 Ibid s 22(11) (as added: see note 13 supra).

17 Ibid s 22(2). In this case ss 19-21 (as amended) (see PARA 659 ante) do not apply: s 22(2).

The provisions relating to a scheduled offence where the value is small preclude the procedures for plea before venue and mode of trial; s 22 (as amended) overrides s 17A (as added: see PARA 657 ante): *R v Kelly* [2001] RTR 45, CA.

Such an offence may still be an indictable offence in law, and therefore an attempt to commit it will be an offence under the Criminal Attempts Act 1981 s 1(1): see *R v Bristol Magistrates' Court, ex p E* [1998] 3 All ER 798, [1999] 1 WLR 390. The Magistrates' Courts Act 1980 s 22 (as amended) does not state that criminal damage is triable only summarily: *R v Fennell* [2000] 1 WLR 2011, [2000] 2 Cr App Rep 218, CA (judge could therefore leave alternative verdict of criminal damage to the jury without the need to amend the indictment).

Where in pursuance of the Magistrates' Courts Act 1980 s 22(2) a magistrates' court proceeds to the summary trial of an information, then, if the accused is summarily convicted of the offence:

- 59 (1) subject to s 33(3) (as added) (see *infra*) the court does not have power to impose on him in respect of that offence imprisonment for more than three months or a fine greater than level 4 on the standard scale (s 33(1)(a) (amended by the Aggravated Vehicle-Taking Act 1992 s 2(3); and the Criminal Justice Act 1991 s 17(3)(b), Sch 4 Pt II)); and
- 60 (2) the Powers of Criminal Courts (Sentencing) Act 2000 s 3 (committal to Crown Court for sentence) (see PARA 777 *post*) does not apply as regards that offence (Magistrates' Courts Act 1980 s 33(1)(b) (amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 65)).

The Magistrates' Courts Act 1980 s 33(1)(a) (as amended) (see head (1) *supra*) does not apply to an offence under the Theft Act 1968 s 12A (as added) (aggravated vehicle-taking) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 299): Magistrates' Courts Act 1980 s 33(3) (added by the Aggravated Vehicle-Taking Act 1992 s 2(3)). If it appears to the Secretary of State that there has been a change in the value of money since the relevant date, he may by order substitute for the sum for the time being specified in the Magistrates' Courts Act 1980 s 33(3)(1)(a) (as amended) such other sum or sums as appear to him justified by the change: s 143(1) (substituted by the Criminal Justice Act 1982 s 48(1)(a)); Magistrates' Courts Act 1980 s 143(2)(c). At the date at which this volume states the law no such orders had been made.

As to the laying of informations see PARA 681 *et seq post*. 'Fine' includes a pecuniary penalty but does not include a pecuniary forfeiture or pecuniary compensation: s 33(2). As to the standard scale see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. As to the jurisdiction to try summarily an offence triable either way see PARA 524 *ante*. For the meaning of 'magistrates' court' see PARA 583 *ante*.

18 *Ibid* s 22(3). The procedure referred to in the text is that under s 19 (as amended) without further regard to s 22 (as amended): see PARA 659 *ante*.

19 *Ibid* s 22(4).

20 *Ibid* s 22(5).

21 *Ibid* s 22(5)(a).

22 *Ibid* s 22(5)(b). As to the maximum penalties on summary conviction in pursuance of s 22 (as amended) see note 17 *supra*.

23 As to consent see PARA 659 note 31 *ante*.

24 Magistrates' Courts Act 1980 s 22(6).

25 *Ie* in accordance with *ibid* s 22(2) (see the text and note 17 *supra*) as if s 22(2) applied: s 22(6)(a).

26 See *ibid* s 22(6)(a).

27 *Ie* in accordance with *ibid* s 22(3) (see the text and note 18 *supra*) as if s 22(3) applied: s 22(6)(b).

28 See *ibid* s 22(6)(b).

29 See the Criminal Justice Act 1988 ss 40, 41 (both as amended); and PARA 660 *ante*.

30 For the meaning of 'Crown Court' see PARA 508 note 9 *ante*.

31 Magistrates' Courts Act 1980 s 22(8). Where a person is convicted before the Crown Court of a scheduled offence it is not open to him to appeal to the Court of Appeal against the conviction on the ground that the decision of the court which committed him for trial as to the value involved was mistaken: Criminal Appeal Act 1968 s 1(3) (added by the Magistrates' Courts Act 1980 s 154(1), Sch 7 para 71). For the meaning of 'scheduled offence' see note 2 *supra*; definition applied by virtue of the Criminal Appeal Act 1968 s 1(4) (added by the Magistrates' Courts Act 1980 Sch 7 para 71). For the meaning of 'the value involved' see note 10 *supra*; definition applied by virtue of the Criminal Appeal Act 1968 s 1(4) (as so added). For the meaning of 'Court of Appeal' see PARA 568 note 11 *ante*.

## UPDATE

### **661 Minor offences of criminal damage triable either way to be tried summarily**

TEXT AND NOTES 6, 10, 14--See further Serious Crime Act 2007 Sch 6 para 5 (references to common law offence of incitement).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(1) CRIMINAL AND CIVIL JURISDICTION/(i) Criminal Jurisdiction/A. MODE OF TRIAL/662. Power of court to proceed in the absence of the accused.

## **662. Power of court to proceed in the absence of the accused.**

As a general rule everything the court must do during mode of trial proceedings must be done before any evidence is called and with the accused present in court<sup>1</sup>. However, the court may proceed with mode of trial proceedings in the absence of the accused<sup>2</sup> if it considers that by reason of his disorderly conduct before the court it is not practicable for the proceedings to be conducted in his presence<sup>3</sup>.

The court may also proceed in the absence of the accused<sup>4</sup> where: (1) the accused is represented by a legal representative<sup>5</sup> who in his absence signifies to the court the accused's consent<sup>6</sup> to the proceedings for determining how he is to be tried for the offence<sup>7</sup> being conducted in his absence<sup>8</sup>; and (2) the court is satisfied that there is good reason for proceeding in the absence of the accused<sup>9</sup>.

If, in the case of a minor offence of criminal damage<sup>10</sup>, it appears to the court for any reason not clear whether, for the offence charged, the value involved does or does not exceed the relevant sum<sup>11</sup>, the court: (a) if the accused's consent to be tried summarily has been or is signified by the person representing him, must proceed as if the offence were triable only summarily<sup>12</sup>; or (b) if that consent has not been and is not so signified, must proceed with the ordinary mode of trial procedure<sup>13</sup>.

If, where the court has considered which mode of trial appears more suitable<sup>14</sup>, it appears to the court that the offence is more suitable for summary trial then: (i) if the accused's consent to be tried summarily has been or is signified by the person representing him, the court must proceed to the summary trial of the information<sup>15</sup>; or (ii) if that consent has not been and is not so signified, the court must proceed to inquire into the information as examining justices<sup>16</sup> and may adjourn the hearing without remanding the accused<sup>17</sup>.

If, where the court has considered which mode of trial appears more suitable<sup>18</sup>, it appears to the court that the offence is more suitable for trial on indictment, the court must proceed to inquire into the information as examining justices and may adjourn the hearing without remanding the accused<sup>19</sup>.

1 See the Magistrates' Courts Act 1980 s 18(2); and PARA 659 ante. Where a person is charged before a magistrates' court with an offence triable either way the court must enter in the register to show whether he was present when the proceedings for determining the mode of trial were conducted and, if they were conducted in his absence, whether they were so conducted by virtue of s 18(3) (disorderly conduct on his part: see the text to notes 2-3 infra) or by virtue of s 23(1) (as amended) (consent signified by person representing him: see the text to notes 5-9 infra): Magistrates' Courts Rules 1981, SI 1981/552, r 66(6). For the meaning of 'magistrates' court' see PARA 583 ante. As to the duty to keep the register see PARA 628 ante. For the meaning of 'offence triable either way' see PARA 653 ante.

2 I.e. in accordance with such of the provisions of the Magistrates' Courts Act 1980 ss 19-22 (as amended) (see PARAS 659, 661 ante) as are applicable in the circumstances: see s 18(3).

3 Ibid s 18(3). The provisions of s 23(3)-(5) (see the text and notes 10-19 infra), so far as applicable, have effect in relation to proceedings conducted in the absence of the accused by virtue of s 18(3) (references in s

23(3)-(5) to the person representing the accused being for this purpose read as references to the person, if any, representing him): see s 18(3).

4 Ibid s 23(2). The court may proceed in the absence of the accused in accordance with such of the provisions of ss 19-22 (as amended) (see PARAS 659, 661 ante) as are applicable in the circumstances: s 23(2).

5 For the meaning of 'legal representative' see PARA 658 note 4 ante.

6 As to consent see PARA 659 note 31 ante.

7 As to the meaning of 'offence' see PARA 522 note 4 ante.

8 Magistrates' Courts Act 1980 s 23(1)(a) (amended by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 25(1), (3)(a)).

9 Magistrates' Courts Act 1980 s 23(1)(b).

10 Ie where ibid s 22(1) (as amended) applies: see PARA 661 ante.

11 Ie under ibid s 22(4): see PARA 661 ante. In such a case the provisions of s 22(5), (6) (see PARA 661 ante) do not apply: see s 23(3).

12 See ibid ss 22(2), 23(3)(a). The court must proceed in accordance with s 22(2), as if s 22(2) applied: s 23(3)(a).

13 See ibid ss 22(3), 23(3)(b). The court must proceed in accordance with ibid s 22(3), as if s 22(3) applied: s 23(3)(b).

14 Ie where the court has considered which mode of trial is more suitable as required by ibid s 19(1): see PARA 659 ante.

15 Ibid s 23(4)(a). Section 20 (as amended) does not then apply: s 23(4)(a). As to the laying of informations see PARA 681 et seq post.

16 As to the use of the expression 'examining justices' see PARA 524 note 9 ante.

17 Magistrates' Courts Act 1980 s 23(4)(b). Section 20 (as amended) (procedure where summary trial appears more suitable) does not then apply: s 23(4)(b). As to adjournment and remand see PARAS 707-724 post.

18 See note 16 supra.

19 Magistrates' Courts Act 1980 s 23(5). Section 21 (procedure where trial on indictment appears more suitable) does not then apply: s 23(5).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(1) CRIMINAL AND CIVIL JURISDICTION/(i) Criminal Jurisdiction/A. MODE OF TRIAL/663. Summary trial of information against child or young person for indictable offence.

### **663. Summary trial of information against child or young person for indictable offence.**

Where a person under the age of 18 years<sup>1</sup> appears<sup>2</sup> or is brought before a magistrates' court<sup>3</sup> on an information<sup>4</sup> charging him with an indictable offence<sup>5</sup>, other than homicide<sup>6</sup>, he must be tried summarily unless<sup>7</sup>:

- 157 (1) the offence is (a) punishable in the case of a person aged 21 or over with imprisonment for 14 years or more, not being an offence the sentence for which is fixed by law<sup>8</sup>; (b) an indecent assault on a woman<sup>9</sup>; (c) an indecent assault on a man<sup>10</sup>; (d) causing death by dangerous driving<sup>11</sup>; or (e) causing death by careless

driving while under influence of drink or drugs<sup>12</sup>, and the court considers that if he is found guilty of the offence it ought to be possible to sentence him accordingly<sup>13</sup>; or  
158 (2) he is charged jointly with a person who has attained the age of 18 years and the court considers it necessary in the interests of justice to commit them both for trial<sup>14</sup>.

Accordingly, in a case falling within head (1) or head (2) above, the court must commit the accused for trial if either it is of the opinion that there is sufficient evidence to put him on trial or it has power<sup>15</sup> to commit him without consideration of the evidence<sup>16</sup>. Where a magistrates' court commits a person under the age of 18 for trial for an offence of homicide, or for an offence falling within head (1) above, it may also commit him for trial for any other indictable offence with which he is charged at the same time if the charges for both offences could be joined in the same indictment<sup>17</sup>.

If on trying a person summarily<sup>18</sup> the court finds him guilty, it may impose a fine not exceeding a stated amount<sup>19</sup> or may exercise the same powers as it could have exercised if he had been found guilty of an offence for which, but for the restriction on imposing imprisonment on young offenders<sup>20</sup>, it could have sentenced him to imprisonment for a term not exceeding the maximum term of imprisonment for the offence on conviction on indictment, or six months, whichever is the less<sup>21</sup>.

1 As to a person's age see PARA 738 post.

2 As to appearance by legal representatives see PARA 693 note 3 post.

3 For the meaning of 'magistrates' court' see PARA 583 ante.

4 As to the laying of informations see PARA 681 et seq post.

5 For the meaning of 'indictable offence' see PARA 653 ante.

6 As to homicide see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 84 et seq.

7 Magistrates' Courts Act 1980 s 24(1) (amended by the Criminal Justice Act 1991 s 68, Sch 8 para 6(1)(a)). See further CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1255.

8 Magistrates' Courts Act 1980 s 24(1)(a) (amended by the Criminal Justice and Public Order Act 1994 s 168(2), (3), Sch 10 para 40, Sch 11; and the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 64(1), (2)); Powers of Criminal Courts (Sentencing) Act 2000 s 91(1)(a). As from a day to be appointed the reference in s 91(1)(a) to the age of 21 is replaced with a reference to the age of 18: see s 91(1)(a) (prospectively amended by the Criminal Justice and Court Service Act 2000 s 74, Sch 7 paras 160, 181). At the date at which this volume states the law no such day had been appointed.

9 Magistrates' Courts Act 1980 s 24(1)(a) (as amended: see note 8 supra); Powers of Criminal Courts (Sentencing) Act 2000 s 91(1)(b); and see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 78. The text refers to offences under the Sexual Offences Act 1956 s 14.

10 Magistrates' Courts Act 1980 s 24(1)(a) (as amended: see note 8 supra); Powers of Criminal Courts (Sentencing) Act 2000 s 91(1)(c); and see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 78. The text refers to offences under the Sexual Offences Act 1956 s 15 (as amended) committed after 30 September 1997.

11 Magistrates' Courts Act 1980 s 24(1)(a) (as amended: see note 8 supra); Powers of Criminal Courts (Sentencing) Act 2000 s 91(2)(a). The text refers to offences under the Road Traffic Act 1988 s 1 (as substituted): see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 963.

12 Magistrates' Courts Act 1980 s 24(1)(a) (as amended: see note 8 supra); Powers of Criminal Courts (Sentencing) Act 2000 s 91(2)(b). The text refers to offences under the Road Traffic Act 1988 s 3A (as added): see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 974.

13 Magistrates' Courts Act 1980 s 24(1)(a) (amended by the Crime and Disorder Act 1998 s 119, Sch 8 para 40(1)). As to the court's obligation to have regard to a young offender's welfare see *R v Secretary of State for*



*the Home Department, ex p Furber* [1998] 1 All ER 23, [1998] 1 Cr App Rep (S) 208, [1997] Crim LR 841, DC, approved in *R v M, R v L* [1998] 2 All ER 939, [1999] 1 WLR 485, CA.

14 Magistrates' Courts Act 1980 s 24(1)(b) (amended by the Criminal Justice Act 1991 Sch 8 para 6(1)(a)).

Where, in a case falling within the Magistrates' Courts Act 1980 s 24(1)(b) (as amended), a magistrates' court commits a person under the age of 18 years for trial for an offence with which he is charged jointly with a person who has attained that age, the court may also commit him for trial for any other indictable offence with which he is charged at the same time (whether jointly with the person who has attained that age or not), if the charges for both offences could be joined on the same indictment: s 24(2) (amended by the Criminal Justice Act 1991 Sch 8 para 6(1)(a); and the Crime and Disorder Act 1998 Sch 8 para 40(2)). See further CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1255. As to offences triable only on indictment see PARA 654 ante.

15 Ie under the Magistrates' Courts Act 1980 s 6(2) (as substituted): see PARA 676 post.

16 Ibid s 24(1).

17 Ibid s 24(1A) (added by the Crime and Disorder Act 1998 s 47(6)).

18 Ie in pursuance of the Magistrates' Courts Act 1980 s 24(1) (as amended): see the text and notes 1-16 supra.

19 Ie the fine must not exceed £1,000: see ibid s 24(3) (amended by the Criminal Justice Act 1991 s 17(2)(a)). In relation to a person under the age of 14, the fine must not exceed £250: Magistrates' Courts Act 1980 s 24(4) (amended by the Criminal Justice Act 1991 ss 17(2)(a), (b), 101(2), Sch 13).

If it appears to the Secretary of State that there has been a change in the value of money since the relevant date, he may by order substitute for the sum for the time being specified in the Magistrates' Courts Act 1980 s 24(3), (4) (as amended) such other sum or sums as appear to him justified by the change: s 143(1), (2)(aa) (s 143(1) substituted, and s 143(2)(aa) added by the Criminal Justice Act 1982 s 48(1)). As to the Secretary of State see PARA 530 note 8 ante. For the meaning of 'relevant date' see PARA 656 note 3 ante. As to the making of orders under the Magistrates' Courts Act 1980 s 143(1) (as substituted) see PARA 656 note 3 ante. At the date at which this volume states the law no such orders had been made.

20 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 89(1) (prospectively amended): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 11.

21 Magistrates' Courts Act 1980 s 24(3) (amended by the Criminal Justice Act 1982 s 77, Sch 14 para 47; the Criminal Justice Act 1991 s 17(2)(a); and the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 64(1), (3)). As to maximum penalties see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 6. As to the adjournment of trial see the Magistrates' Courts Act 1980 s 10 (as amended); and PARA 707 post.

## UPDATE

### 663 Summary trial of information against child or young person for indictable offence

TEXT AND NOTES 5, 6--Now refers to an indictable offence other than one falling within the Magistrates' Courts Act 1980 s 24(1B): s 24(1) (amended by the Criminal Justice Act 2003 s 42(2)(a)). An offence falls within the 1980 Act s 24(1B) if it is an offence of homicide, each of the requirements of the Firearms Act 1968 s 51A(1) would be satisfied with respect to the offence; and the person charged with it, if he were convicted of the offence; or the Violent Crime Reduction Act 2006 s 29(3) (minimum sentences in certain cases of using someone to mind a weapon) would apply if he were convicted of the offence: 1980 Act s 24(1B) (added by the Criminal Justice Act 2003 s 42(2)(c); amended by Violent Crime Reduction Act 2006 Sch 1 para 1, Sch 5).

NOTES 9, 10--Sexual Offences Act 1956 ss 14, 15 repealed: Sexual Offences Act 2003 Sch 6 para 11(a), Sch 7. See further Violent Crime Reduction Act 2006 s 55 (continuity of sexual offences law).

NOTES 16, 17--See *R (on the application of C) v Grimsby and Cleethorpes Magistrates' Court* [2004] EWHC 2240 (Admin), (2004) 168 JP 569, DC (see PARA 664 NOTE 21); and *R (on the application of the DPP) v South East Surrey Youth Court (Ghanbari, interested*

*party*) [2005] EWHC 2929 (Admin), [2006] 2 All ER 444, DC (guidance on when a youth court should send a child to Crown Court for trial).

TEXT AND NOTE 17--Reference to an offence of homicide is now to an offence falling within the 1980 Act s 24(1B) (see TEXT AND NOTES 5, 6): s 24(1A) (amended by the Criminal Justice Act 2003 s 42(2)(b)).

NOTE 21--See *R (on the application of W) v Brent Youth Court*; *R (on the application of S) v Enfield Youth Court*; *R (on the application of B) v Richmond-on-Thames Youth Court* [2006] EWHC 95 (Admin), (2006) 170 JP 198, DC (magistrates could accept jurisdiction in respect of 12-year-old charged with rape).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(1) CRIMINAL AND CIVIL JURISDICTION/(i) Criminal Jurisdiction/A. MODE OF TRIAL/664. Changing the mode of trial.

#### **664. Changing the mode of trial.**

There is a separate procedure where a person who has attained the age of 18 years<sup>1</sup> appears or is brought before a magistrates' court<sup>2</sup> on an information<sup>3</sup> charging him with an offence triable either way<sup>4</sup>. Where the court has begun to try the information summarily<sup>5</sup>, the court may, at any time before the conclusion of the evidence for the prosecution, discontinue the summary trial and proceed to inquire into the information as examining justices<sup>6</sup> and, on doing so, must adjourn the hearing<sup>7</sup>.

Where the court has begun to inquire into the information as examining justices, then, if at any time during the inquiry it appears to the court, having regard to any representations made in the presence of the accused by the prosecutor, or made by the accused, and to the nature of the case, that the offence is after all more suitable for summary trial, the court may ask the accused whether he consents to be tried summarily and, if he so consents, may proceed to try the information summarily<sup>8</sup>. Before asking the accused whether he consents to be tried summarily, the court must explain to the accused in ordinary language that it appears to the court more suitable for him to be tried summarily for the offence, but that this can only be done if he consents<sup>9</sup> to be so tried<sup>10</sup>, and unless it has already done so, explain to him<sup>11</sup> in ordinary language about the court's power to commit to the Crown Court for sentence<sup>12</sup>.

Where a person under the age of 18 years appears or is brought before a magistrates' court on an information charging him with an indictable offence<sup>13</sup> other than homicide<sup>14</sup>, and the court: (1) has begun to try the information summarily, on the footing that the case does not fall within a certain category of case<sup>15</sup>, and must therefore be tried summarily<sup>16</sup>; or (2) has begun to inquire into the case as examining justices on the footing that the case does so fall<sup>17</sup>: (a) if, in a case falling within head (1) above, it appears to the court at any time before the conclusion of the evidence for the prosecution that the case is after all one which ought not to be tried summarily<sup>18</sup>, the court may discontinue the summary trial and proceed to inquire into the information as examining justices and, on doing so, must adjourn the hearing<sup>19</sup>; or (b) if, in a case falling within head (2) above, it appears to the court at any time during the inquiry that the case is after all one which ought to be tried summarily<sup>20</sup>, the court may proceed to try the information summarily<sup>21</sup>.

1 As to a person's age see PARA 738 post.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 As to the laying of informations see PARA 681 et seq post.

4 Magistrates' Courts Act 1980 s 25(1) (amended by the Criminal Justice Act 1991 s 68, Sch 8 para 6(1)(a)). The procedure referred to in the text is that under the Magistrates' Courts Act 1980 s 25(2)-(4) (as amended): see the text and notes *infra*. For the meaning of 'offence triable either way' see PARA 653 *ante*.

5 *Ie* otherwise than in pursuance of *ibid* s 22(2): see PARA 661 *ante*.

6 As to the use of the expression 'examining justices' see PARA 524 note 9 *ante*.

7 Magistrates' Courts Act 1980 s 25(2) (amended by the Criminal Procedure and Investigations Act 1996 s 47, Sch 1 paras 1, 5(1), (2)). If the court adjourns the hearing under the Magistrates' Courts Act 1980 s 25(2) (as amended) it may, if it thinks fit, do so without remanding the accused: s 25(8) (added by the Criminal Procedure and Investigations Act 1996 Sch 1 paras 1, 5(1), (3)). As to adjournment and remand see PARAS 707-734 *post*.

See also *R v Herefordshire Youth Court, ex p J* [1998] 20 LS Gaz R 34, (1998) 142 Sol Jo LB 150, DC (justices may not exercise their powers under the Magistrates' Courts Act 1980 s 25(2) (as amended) where a defendant has previously pleaded guilty in the youth court).

See *Re Gillard* [1986] AC 442, sub nom *Chief Constable of West Midlands Police v Gillard* [1985] 3 All ER 634, HL; and *R v Telford Magistrates' Court, ex p Darlington* (1987) 152 JP 215, (1987) 87 Cr App Rep 194, DC (justices may not discontinue summary hearing and commit for trial after unequivocal plea of guilty has been tendered and accepted). See also *R v Southend Magistrates' Court, ex p Wood* (1986) 152 JP 97, DC; and *R v St Helens Magistrates' Court, ex p Critchley* (1987) 152 JP 102, [1988] Crim LR 311, DC (no power to change mode of trial where justices had not yet begun to try case summarily); *R v Birmingham Stipendiary Magistrate, ex p Webb* (1992) 95 Cr App Rep 75, (1992) 157 JP 89, DC (a magistrate has no power to commit after deciding that a prosecution witness has come up to proof but before beginning to try a charge summarily); *R v Horseferry Road Magistrates' Court, ex p K* [1997] QB 23, [1996] 3 All ER 719, DC (in certain circumstances, a trial can begin for the purposes of the Magistrates' Courts Act 1980 s 25(2) (as amended) after the entering of a plea of not guilty but before evidence has been called).

The prosecution case is not concluded where justices disagree and the case is put back for a rehearing: *R v Coventry City Justices, ex p Wilson* [1981] Crim LR 787, DC.

8 Magistrates' Courts Act 1980 s 25(3) (amended by the Prosecution of Offences Act 1985 s 31(5), (6), Sch 1 para 3). However, where the prosecution is being carried on by the Attorney General or the Solicitor General, the court must not exercise the power conferred by the Magistrates' Courts Act 1980 s 25(3) (as amended) without his consent and, where the prosecution is being carried on by the Director of Public Prosecutions, must not exercise that power if the Attorney General directs that it should not be exercised: s 25(3A) (added by the Prosecution of Offences Act 1985 s 31(5), (6), Sch 1 para 3). As to jurisdiction to try summarily an offence triable either way see PARA 524 *ante*. As to Her Majesty's Attorney General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 529 *et seq*. As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1079 *et seq*.

Summary trial under the Magistrates' Courts Act 1980 s 25(3) (as amended) is possible only where the original offence charged was triable either way: *R v Cambridgeshire Justices, ex p Fraser* [1985] 1 All ER 667, [1984] 1 WLR 1391, DC. Examining justices have no jurisdiction to alter the decision as to mode of trial except in accordance with the Magistrates' Courts Act 1980 s 25(3) (as amended): *R v Liverpool Justices, ex p Crown Prosecution Service* (1989) 90 Cr App Rep 261, DC.

9 As to consent see PARA 659 note 31 *ante*.

10 Magistrates' Courts Act 1980 s 25(4)(a).

11 *Ie* as provided in *ibid* s 20(2)(b) (as amended): see PARA 659 *ante*.

12 *Ibid* s 25(4)(b). As to the meaning of 'sentence' see PARA 659 note 25 *ante*.

13 For the meaning of 'indictable offence' see PARA 653 *ante*.

14 As to homicide see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 84 *et seq*.

15 *Ie* within the Magistrates' Courts Act 1980 s 24(1)(a) (as amended) or s 24(1)(b) (as amended) (summary trial of information against child for indictable offence other than homicide): see PARA 663 *ante*.

16 *Ibid* s 25(5)(a).

17 *Ibid* s 25(5)(b).

18 *Ie* under *ibid* s 24(1) (as amended): see PARA 663 *ante*.

19 Ibid s 25(6) (amended by the Criminal Procedure and Investigations Act 1996 s 47, Sch 1 para 5(1), (2)). See further CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1255. As to the circumstances where changing the mode of trial under the Magistrates' Courts Act 1980 s 25(6) (as amended) is justified see *R (on the application of K) v Leeds Youth Court* [2001] EWHC Admin 177, 165 JP 694, DC (evidence that put a different light on the facts justified changing the mode of trial).

If the court adjourns the hearing under the Magistrates' Courts Act 1980 s 25(6) (as amended) it may, if it thinks fit, do so without remanding the accused: s 25(8) (added by the Criminal Procedure and Investigations Act 1996 Sch 1 paras 1, 5(1), (3)).

As to the power to issue a summons and a warrant for the arrest of the accused where the Magistrates' Courts Act 1980 s 25(6) (as amended) applies see s 26; and PARA 665 post.

20 See note 19 supra.

21 Magistrates' Courts Act 1980 s 25(7).

## UPDATE

### 664 Changing the mode of trial

NOTE 21--See *R (on the application of C) v Grimsby and Cleethorpes Magistrates' Court* [2004] EWHC 2240 (Admin), (2004) 168 JP 569, DC (decision to retain jurisdiction in relation to offence which could have been joined in same indictment and which was not a grave offence could not be reopened as claimant did not fall within s 24 (see PARA 663) and therefore did not fall within s 25).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(1) CRIMINAL AND CIVIL JURISDICTION/(i) Criminal Jurisdiction/A. MODE OF TRIAL/665. Process to compel appearance of accused.

### 665. Process to compel appearance of accused.

Where: (1) the accused is represented by a legal representative<sup>1</sup> who in his absence signifies to the court the accused's consent<sup>2</sup> to the proceedings for determining how he is to be tried for the offence<sup>3</sup> being conducted in his absence<sup>4</sup>, the court is not satisfied that there is good reason for proceeding in the absence of the accused<sup>5</sup>; or (2) in certain circumstances<sup>6</sup> the court adjourns the hearing without remanding the accused<sup>7</sup>, the justice or any of the justices of which the court is composed<sup>8</sup> may issue a summons<sup>9</sup> directed to the accused requiring his presence before the court<sup>10</sup>. If the accused is not present at the time and place appointed in a case within head (1) above for the proceedings<sup>11</sup>, or in a case within head (2) above for the resumption of the hearing, the court may issue a warrant for his arrest<sup>12</sup>.

1 For the meaning of 'legal representative' see PARA 658 note 4 ante.

2 As to consent see PARA 659 note 31 ante.

3 As to the meaning of 'offence' see PARA 522 note 4 ante.

4 Ie the circumstances mentioned in the Magistrates' Courts Act 1980 s 23(1)(a) (as amended): see PARA 662 ante.

5 See ibid s 26(1)(a).

6 Ie where ibid s 23(4)(b) or s 23(5) or s 25(2) or s 25(6) (as amended) applies: see PARAS 662, 664 ante.

7 See ibid s 26(1)(b). As to adjournment and remand see PARAS 707-724 post.

8 As to the constitution of magistrates' courts see PARAS 595-602 ante.

9 For the form of summons see the Magistrates' Courts Rules 1981, SI 1981/552, r 98; the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Form 3; and PARA 688 post. See PARA 505 note 12 ante.

10 Magistrates' Courts Act 1980 s 26(1).

11 In the proceedings under *ibid* s 19(1) or s 22(1), as the case may be: see PARAS 659, 661 ante.

12 *Ibid* s 26(2). As to the power to issue warrants of arrest see PARA 541 ante.

## UPDATE

### 665 Process to compel appearance of accused

NOTE 9--SI 1981/553 Sch 2 Form 3 revoked: SI 2003/1236.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(1) CRIMINAL AND CIVIL JURISDICTION/(i) Criminal Jurisdiction/A. MODE OF TRIAL/666. Corporations.

### 666. Corporations.

In general<sup>1</sup> the provisions of the Magistrates' Courts Act 1980 relating to the inquiry into, and trial of, indictable offences<sup>2</sup> apply to a corporation as they apply to an adult<sup>3</sup>. A magistrates' court<sup>4</sup> may commit a corporation for trial by an order in writing<sup>5</sup> empowering the prosecutor to prefer a bill of indictment<sup>6</sup> in respect of the offence<sup>7</sup> named in the order<sup>8</sup>. Such an order may not prohibit the inclusion in the bill of indictment of counts<sup>9</sup> that may be included in the bill in substitution for, or in addition to, counts charging the offence named in the order<sup>10</sup>.

A representative<sup>11</sup> may on behalf of a corporation<sup>12</sup>: (1) make before examining justices<sup>13</sup> such representations as could be made by an accused who is not a corporation<sup>14</sup>; (2) consent to the corporation being tried summarily<sup>15</sup>; or (3) enter a plea of guilty or not guilty on the trial by a magistrates' court of an information<sup>16</sup>.

Where a corporation and an individual who has attained the age of 17<sup>17</sup> are jointly charged before a magistrates' court with an offence triable either way<sup>18</sup>, the court must not try either of the accused summarily unless each of them consents<sup>19</sup> to be so tried<sup>20</sup>.

1 In subject to the Magistrates' Courts Act 1980 s 46, Sch 3 paras 1-5 (as amended): see the text and notes 4-16 *infra*.

2 For the meaning of 'indictable offence' see PARA 653 ante.

3 Magistrates' Courts Act 1980 Sch 3 para 6. Service of a summons issued by a justice of the peace on a corporation may be effected by delivering it at, or sending it by post to, the registered office of the corporation, if that office is in the United Kingdom, or, if there is no registered office in the United Kingdom, any place in the United Kingdom where it trades or conducts its business: Magistrates' Courts Rules 1981, SI 1981/552, r 99(3). In relation to a document (other than a summons) issued by a justice of the peace, r 99(3) has effect as it has effect in relation to a summons so issued, but with the substitution of references to England and Wales for the references to the United Kingdom: r 99(4). Any summons or other document served in manner authorised by r 99(3), (4), for the purposes of any enactment other than the Magistrates' Courts Act 1980 or the Magistrates' Courts Rules 1981, SI 1981/552, requiring a summons or other document to be served in any particular manner, is deemed to have been as effectively served as if it had been served in that manner, and nothing in r 99 (as amended) renders invalid the service of a summons or other document in that manner: r 99(5). For the meaning of 'United Kingdom' see PARA 528 note 3 ante; for the meaning of 'England' see PARA 501 note 7 ante; and for the meaning of 'Wales' see PARA 501 note 7 ante.

As to the criminal liability of a corporation see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 38.

4 For the meaning of 'magistrates' court' see PARA 583 ante.

5 As to the meaning of 'writing' see PARA 507 note 12 ante.

6 As to bills of indictment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1205.

7 As to the meaning of 'offence' see PARA 522 note 4 ante.

8 Magistrates' Courts Act 1980 Sch 3 para 1(1). As to authentication of an order see *R v H Sherman Ltd* [1949] 2 KB 674, [1949] 2 All ER 207, CCA; *R v Deputy Recorder of Wolverhampton, ex p DPP* [1951] 1 All ER 627n, 115 JP 212, DC (both cases were decided under previous legislation). For the prescribed form of order see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Form 19. It is not a mandatory requirement that Form 19 be used in committal proceedings against a corporation: *R v Nelson Group Services (Maintenance) Ltd* [1998] 4 All ER 331, [1999] 1 WLR 1526, CA. See PARA 505 note 12 ante.

9 le under the Administration of Justice (Miscellaneous Provisions) Act 1933 s 2 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1206.

10 Magistrates' Courts Act 1980 Sch 3 para 1(2).

11 'Representative', in relation to a corporation, means a person duly appointed by the corporation to represent it for the purpose of doing any act or thing which the representative of a corporation is authorised to do, but a person so appointed is not, by virtue of being so appointed, qualified to act on behalf of the corporation before any court for any other purpose: Criminal Justice Act 1925 s 33(6); Magistrates' Courts Act 1980 Sch 3 para 8. The representative need not be appointed under the seal of the corporation, and a statement in writing purporting to be signed by a managing director of the corporation, or by any person (by whatever name called) having, or being one of the persons having, the management of the affairs of the corporation, to the effect that the person named in the statement has been appointed as the representative of the corporation for these purposes is admissible without further proof as prima facie evidence that that person has been so appointed: Criminal Justice Act 1925 s 33(6); Magistrates' Courts Act 1980 Sch 3 para 8.

12 Ibid Sch 3 para 2.

13 As to the use of the expression 'examining justices' see PARA 524 note 9 ante.

14 Magistrates' Courts Act 1980 Sch 3 para 2(a) (substituted by the Criminal Procedure and Investigations Act 1996 s 47, Sch 1 paras 1, 13).

15 Magistrates' Courts Act 1980 Sch 3 para 2(b). As to the procedure for offences triable summarily see PARA 681 et seq post.

16 Ibid Sch 3 para 2(c). As to the laying of informations see PARA 681 et seq post.

Where a representative appears, any requirement of the Magistrates' Courts Act 1980 that anything is to be done in the presence of the accused, or is to be read or said to him, is to be construed as a requirement that that thing is to be done in the presence of the representative or read or said to the representative: Sch 3 para 3(1). Where a representative does not appear, any such requirement, and any requirement that the consent of the accused is to be obtained for summary trial, does not apply: Sch 3 para 3(2).

Notification or intimation for the purposes of s 12(2) (as substituted and amended) and s 12(3) (as substituted) (see PARA 705 post) may be given on behalf of a corporation by a director or the secretary of the corporation, and the provisions of s 12(2) (as substituted and amended) and s 12(3) (as substituted) apply in relation to a notification or intimation purporting to be so given as they apply to a notification or intimation purporting to be given by an individual accused: Sch 3 para 4(1). 'Director', in relation to a corporation which is established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking and whose affairs are managed by the members thereof, means a member of that corporation: Sch 3 para 4(2). As to the meaning of 'enactment' see PARA 505 note 16 ante. See PARA 706 post.

17 As to a person's age see PARA 738 post.

18 For the meaning of 'offence triable either way' see PARA 653 ante.

19 As to consent see PARA 659 note 31 ante.

20 Magistrates' Courts Act 1980 Sch 3 para 7.

**UPDATE****666 Corporations**

NOTE 8--SI 1981/553 Sch 2 Form 19 revoked: SI 2003/1236.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(1) CRIMINAL AND CIVIL JURISDICTION/(i) Criminal Jurisdiction/A. MODE OF TRIAL/667. Claim of right or title.

**667. Claim of right or title.**

The defendant in a magistrates' court is entitled to set up a claim of right or title to do the act which is the subject of the information<sup>1</sup>, and this claim may oust the court's jurisdiction<sup>2</sup>. The claim of right or title is limited to questions of title to real property<sup>3</sup>. If the claim is made in good faith it is not for the court to inquire into all the circumstances to see if it is impossible<sup>4</sup>. If, upon the consideration of admitted facts, it is clear that the law will not admit the claim, the court's jurisdiction is not ousted<sup>5</sup>, but if in order to decide whether a legal claim exists it is necessary to determine some disputed question of fact, or if it is not clear that the right claimed is impossible in law, the court's jurisdiction is ousted<sup>6</sup>, and in such a case the question of right must be settled by a higher tribunal<sup>7</sup>.

It is for the magistrates' court to determine whether or not upon the evidence before it a bona fide question of title is raised<sup>8</sup>, but if there is any evidence of a legal right which a judge might leave to a jury, the magistrates' court should commit the defendant for trial. It is only when it is plain that the claim is not a claim which can have any legal foundation or is one which is not made in good faith that the jurisdiction is not ousted<sup>9</sup>.

A magistrates' court must not attempt to decide a question of title but need only satisfy itself that the defendant has set up a bona fide claim of right, and for this purpose it does not matter if the right is of such a kind that it would require extremely strong evidence to establish it, or is one that has no chance of being established unless there is produced evidence much more cogent than that produced before the magistrates' court, so long as the right is one which is possible in law<sup>10</sup>. If the defendant makes a claim to a right which cannot exist in law, or as to which there can be no legal right on his part, then the jurisdiction is not ousted<sup>11</sup>. Proof that the claimant honestly believes he has the right does not of itself oust the jurisdiction; he may be convicted, however honest his belief in the right claimed may be, if the right is unknown to the law, unless mens rea is a necessary ingredient to the offence<sup>12</sup>.

This rule of law does not preclude magistrates' courts from trying offences under the Criminal Damage Act 1971 or any other offences of destroying or damaging property<sup>13</sup>, and is nowadays of only limited application.

1 As to the laying of an information see PARA 681 et seq post.

2 If a bona fide claim of title to real property is set up, a magistrates' court may not proceed further with the hearing: *R v Cridland* (1857) 7 E & B 853.

3 *Eagling v Wheatley* (1976) 141 JP 514, [1977] Crim LR 165, DC.

4 *Scott v Baring* (1895) 64 LJMC 200, DC. See also *Croydon RDC v Crowley* (1909) 73 JP 205, DC.

5 *Arnold v Morgan* [1911] 2 KB 314 at 322, DC, per Ridley J; *R (O'Neill) v Tyrone County Justices* [1917] 2 IR 96.

6 *Arnold v Morgan* [1911] 2 KB 314 at 322, DC, per Ridley J. See also *Hudson v MacRae* (1863) 4 B & S 585. The jurisdiction of a magistrates' court is not ousted if there is no dispute as to the right claimed: *Lucan v Barrett* (1915) 84 LJB 2130, DC.

7 *R v Cridland* (1857) 7 E & B 853; *R v Stimpson* (1863) 4 B & S 301; *Burton v Hudson* [1909] 2 KB 564, DC; *R v Holsworthy Justices, ex p Edwards* [1952] 1 All ER 411, 116 JP 130, DC. But it seems that where the charge is for a summary offence, involving no mens rea, the jurisdiction of a magistrates' court is not ousted, for otherwise the matter could never be dealt with at all: *Duplex Settled Investment Trust Ltd v Worthing Borough Council* [1952] 1 All ER 545 at 547, 50 LGR 167 at 169-170, DC, per Parker J, applied in *R v Ogden, ex p Long Ashton RDC* [1963] 1 All ER 574, [1963] 1 WLR 274, DC.

8 *Legg v Pardoe* (1860) 9 CBNS 289; *Cornwell v Sanders* (1862) 32 LJMC 6.

9 *R v Justices of Richmond, Surrey* (1860) 24 JP 422, (1860) 8 Cox CC 314; *R v Snape* (1863) 27 JP 134; *Burton v Hudson* [1909] 2 KB 564 at 571, DC, per Grantham J; *Watkins v Smith* (1878) 26 WR 692, DC; *R v Stimpson* (1863) 4 B & S 301.

10 *Chesterfield v Fountaine* (1895) [1908] 1 Ch 243n, DC (claim by freeholders of a manor to fish without stint).

11 *Burton v Hudson* [1909] 2 KB 564, DC; *Re Brancaster Fishery* (1875) 39 JP Jo 372; *Mussett v Burch* (1876) 35 LT 486, DC; *Croydon RDC v Crowley* (1909) 73 JP 205, DC; *Priest v Archer* (1887) 51 JP 725, DC; *Ex p Higgins* (1843) 10 Jur 838; *Smith v Cooke* (1914) 84 LJB 959, DC.

12 *Hudson v MacRae* (1863) 4 B & S 585. See also *Halse v Alder* (1874) 38 JP 407; and *Leatt v Vine* (1861) 30 LJMC 207.

13 See the Criminal Damage Act 1971 s 7(2); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 333 et seq.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(1) CRIMINAL AND CIVIL JURISDICTION/(i) Criminal Jurisdiction/B. COMMITTAL PROCEEDINGS/668. General nature of committal proceedings.

## **B. COMMITTAL PROCEEDINGS**

### **668. General nature of committal proceedings.**

'Committal proceedings' means proceedings before a magistrates' court<sup>1</sup> acting as examining justices<sup>2</sup>. The functions of examining justices may be discharged by a single justice<sup>3</sup>. Examining justices must sit in open court except where any enactment<sup>4</sup> contains an express provision to the contrary and except where it appears to them as respects the whole or any part of committal proceedings that the ends of justice would not be served by their sitting in open court<sup>5</sup>.

Evidence tendered before examining justices must be tendered in the presence of the accused<sup>6</sup>. However, examining justices may allow evidence to be tendered before them in the absence of the accused if: (1) they consider that by reason of his disorderly conduct before them it is not practicable for the evidence to be tendered in his presence<sup>7</sup>; or (2) he cannot be present for reasons of health but is represented by a legal representative<sup>8</sup> and has consented to the evidence being tendered in his absence<sup>9</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 Magistrates' Courts Act 1980 s 150(1) (definition prospectively repealed by the Criminal Justice and Public Order Act 1994 s 168(3), Sch 11). As to the use of the expression 'examining justices' see PARA 524 note 9 ante.

3 Magistrates' Courts Act 1980 s 4(1).



4 As to the meaning of 'enactment' see PARA 505 note 16 ante.

5 Magistrates' Courts Act 1980 s 4(2).

6 Ibid s 4(3) (substituted by the Criminal Procedure and Investigations Act 1996 s 47, Sch 1 para 2(2)). The amendment made by the Criminal Procedure and Investigations Act 1996 applies in relation to any alleged offence into which no criminal investigation has begun before 1 April 1997: see the Criminal Procedure and Investigations Act 1996 (Appointed Day No 6) Order 1997, SI 1997/2199.

7 Magistrates' Courts Act 1980 s 4(4)(a) (amended by the Criminal Procedure and Investigations Act 1996 Sch 1 para 2(3)). The amendment made by the Criminal Procedure and Investigations Act 1996 applies in relation to any alleged offence into which no criminal investigation has begun before 1 April 1997: see the Criminal Procedure and Investigations Act 1996 (Appointed Day No 6) Order 1997, SI 1997/2199.

8 For the meaning of 'legal representative' see PARA 658 note 4 ante.

9 Magistrates' Courts Act 1980 s 4(4)(b) (amended by the Criminal Procedure and Investigations Act 1996 Sch 1 para 2(3); and the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 25). The amendment made by the Criminal Procedure and Investigations Act 1996 applies in relation to any alleged offence into which no criminal investigation has begun before 1 April 1997: see the Criminal Procedure and Investigations Act 1996 (Appointed Day No 6) Order 1997, SI 1997/2199.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(1) CRIMINAL AND CIVIL JURISDICTION/(i) Criminal Jurisdiction/B. COMMITTAL PROCEEDINGS/669. Evidence which is admissible.

#### **669. Evidence which is admissible.**

The only evidence admissible by a magistrates' court<sup>1</sup> inquiring into an offence as examining justices<sup>2</sup> is evidence which is tendered by or on behalf of the prosecutor and which falls within the following categories<sup>3</sup>:

- 159 (1) written statements which comply with the conditions for admissibility<sup>4</sup>;
- 160 (2) documents<sup>5</sup> or other exhibits, if any, referred to in such statements<sup>6</sup>;
- 161 (3) depositions which comply with the conditions for admissibility<sup>7</sup>;
- 162 (4) documents or other exhibits, if any, referred to in such depositions<sup>8</sup>;
- 163 (5) statements which comply with the conditions for admissibility<sup>9</sup>;
- 164 (6) other documents which comply with the conditions for admissibility<sup>10</sup>.

In any proceedings before a magistrates' court inquiring as examining justices into an offence:

- 165 (a) which involves an assault, or injury or a threat of injury to, a person<sup>11</sup>;
- 166 (b) which involves cruelty to persons under 16<sup>12</sup>;
- 167 (c) under the Sexual Offences Act 1956, the Indecency with Children Act 1960, the Sexual Offences Act 1967, the Protection of Children Act 1978, or an offence<sup>13</sup> of inciting a girl under 16 to have incestuous sexual intercourse<sup>14</sup>; and
- 168 (d) which consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within heads (a), (b), or (c) above<sup>15</sup>,

a statement made in writing by or taken in writing from a child<sup>16</sup> is admissible in evidence of any matter<sup>17</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

- 2 As to the use of the expression 'examining justices' see PARA 524 note 9 ante.
- 3 Magistrates' Courts Act 1980 s 5A(1), (2) (s 5A added by the Criminal Procedure and Investigations Act 1996 s 47, Sch 1 para 3). The Magistrates' Courts Act 1980 s 5A (as added) applies in relation to any alleged offence into which no criminal investigation has begun before 1 April 1997: see the Criminal Procedure and Investigations Act 1996 (Appointed Day No 6) Order 1997, SI 1997/2199. As to evidence in committal proceedings see further the Magistrates' Courts Rules 1981, SI 1981/552, r 70 (amended by SI 1983/523; SI 1997/706; and SI 2001/610).
- 4 Magistrates' Courts Act 1980 s 5A(3)(a) (as added: see note 3 supra). The text refers to written statements complying with s 5B (as added and amended) (see PARA 670 post). A translation of words said to an interpreter does not constitute a witness statement unless the translation is, in truth, the statement of the witness: *R v Raynor* (2000) 165 JP 149, CA.
- 5 For these purposes, 'document' means anything in which information of any description is recorded: Magistrates' Courts Act 1980 s 5A(4) (as added: see note 3 supra).
- 6 Ibid s 5A(3)(b) (as added: see note 3 supra). See PARA 670 post.
- 7 Ibid s 5A(3)(c) (as added: see note 3 supra). The text refers to depositions complying with s 5C (as added): see PARA 671 post.
- 8 Ibid s 5A(3)(d) (as added: see note 3 supra). See PARA 671 post.
- 9 Ibid s 5A(3)(e) (as added: see note 3 supra). The text refers to statements complying with s 5D (as added): see PARA 672 post.
- 10 Ibid s 5A(3)(f) (as added: see note 3 supra). The text refers to documents falling within s 5E (as added): see PARA 673 post.
- 11 Ibid s 103(2)(a) (s 103 substituted by the Criminal Justice Act 1988 s 33).
- 12 Magistrates' Courts Act 1980 s 103(2)(b) (as substituted: see note 11 supra). The text refers to an offence under the Children and Young Persons Act 1933 s 1 (as amended): see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 528.
- 13 Ie under the Criminal Law Act 1977 s 54 (as amended).
- 14 Magistrates' Courts Act 1980 s 103(2)(c) (as substituted: see note 11 supra).
- 15 Ibid s 103(2)(d) (as substituted: see note 11 supra).
- 16 For these purposes, 'child' has the same meaning as in the Criminal Justice Act 1991 s 53 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1105); Magistrates' Courts Act 1980 s 103(3) (s 103 as substituted (see note 11 supra); and s 103(3) substituted by the Criminal Justice Act 1991 s 55(1)).
- 17 Magistrates' Courts Act 1980 s 103(1) (s 103 as substituted (see note 11 supra); and s 103(1) substituted by the Criminal Procedure and Investigations Act 1996 Sch 1 para 10(2)). The amendment made by the Criminal Procedure and Investigations Act 1996 applies in relation to any alleged offence into which no criminal investigation has begun before 1 April 1997: see the Criminal Procedure and Investigations Act 1996 (Appointed Day No 6) Order 1997, SI 1997/2199.

## UPDATE

### 669 Evidence which is admissible

NOTE 3--SI 1981/552 r 70 further amended: SI 2005/617.

TEXT AND NOTES 11-17--Repealed, as from a day to be appointed: Criminal Justice Act 2003 Sch 3 para 51(6)(b), Sch 37 Pt 4.

TEXT AND NOTES 13, 14--In head (c) references to 1960 Act (repealed) and 1967 Act are now to Sexual Offences Act 2003 Pt 1 (ss 1-79): Magistrates' Courts Act 1980 s 103(2) (c) (amended by the Sexual Offences Act 2003 Sch 6 para 26(2), Sch 7).

See further Violent Crime Reduction Act 2006 s 55 (continuity of sexual offences law).

TEXT AND NOTE 15--See further Serious Crime Act 2007 Sch 6 para 5 (references to common law offence of incitement).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(1) CRIMINAL AND CIVIL JURISDICTION/(i) Criminal Jurisdiction/B. COMMITTAL PROCEEDINGS/670. Written statements.

## **670. Written statements.**

A written statement complies with the conditions for its admissibility in committal proceedings<sup>1</sup> if<sup>2</sup>:

- 169 (1) it purports to be signed by the person who made it<sup>3</sup>;
- 170 (2) it contains a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true<sup>4</sup>;
- 171 (3) before the statement is tendered in evidence a copy of the statement is given, by or on behalf of the prosecutor, to each of the other parties to the proceedings<sup>5</sup>.

In addition, such of the following conditions as apply must also be met:

- 172 (a) if the statement is made by a person under 18 years old, it must give his age<sup>6</sup>;
- 173 (b) if it is made by a person who cannot read it, it must be read to him before he signs it and be accompanied by a declaration by the person who read the statement to the effect that it was so read<sup>7</sup>;
- 174 (c) if it refers to any other document<sup>8</sup> as an exhibit, the copy given to any other party to the proceedings must be accompanied by a copy of that document or by such information as may be necessary to enable the party to whom it is given to inspect that document or a copy of it<sup>9</sup>.

So much of any statement as is admitted in evidence must, unless the court commits the accused for trial<sup>10</sup> or the court otherwise directs, be read aloud at the hearing, and where the court so directs an account must be given orally of so much of any statement as is not read aloud<sup>11</sup>. Any document or other object referred to as an exhibit and identified in a statement admitted in evidence must be treated as if it had been produced as an exhibit and identified in court by the maker of the statement<sup>12</sup>.

If any person in such a written statement admitted in evidence in criminal proceedings wilfully makes a statement material in those proceedings which he knows to be false or does not believe to be true, he is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both<sup>13</sup>.

<sup>1</sup> For the meaning of 'committal proceedings' see PARA 668 ante.

<sup>2</sup> Magistrates' Courts Act 1980 s 5B(1) (s 5B added by the Criminal Procedure and Investigations Act 1996 s 47, Sch 1 para 3). The Magistrates' Courts Act 1980 s 5B (as added and amended) applies in relation to any alleged offence into which no criminal investigation has begun before 1 April 1997: see the Criminal Procedure and Investigations Act 1996 (Appointed Day No 6) Order 1997, SI 1997/2199.

- 3 Magistrates' Courts Act 1980 s 5B(2)(a) (as added: see note 2 supra).
- 4 Ibid s 5B(2)(b) (as added: see note 2 supra). In the case of a statement which indicates in pursuance of s 5B(3)(a) (as added) (see the text to note 6 infra) that the person making it has not attained the age of 14, the written statement complies with the conditions for admissibility if it contains a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he understands the importance of telling the truth in it: s 5B(3A) (added by the Children and Young Persons Act 1969 s 72(3), Sch 5 para 55 (as amended by the Magistrates' Courts Act 1980 s 154, Sch 7 para 87; and the Criminal Procedure and Investigations Act 1996 Sch 1 para 21)).
- 5 Magistrates' Courts Act 1980 s 5B(2)(c) (as added: see note 2 supra).
- 6 Ibid s 5B(3)(a) (as added: see note 2 supra). As to a person's age see PARA 738 post.
- 7 Ibid s 5B(3)(b) (as added: see note 2 supra).
- 8 For these purposes, 'document' means anything in which information of any description is recorded: ibid s 5B(6) (as added: see note 2 supra).
- 9 Ibid s 5B(3)(c) (as added: see note 2 supra).
- 10 Ie by virtue of ibid s 6(2) (as substituted): see PARA 676 post.
- 11 Ibid s 5B(4) (as added: see note 2 supra).
- 12 Ibid s 5B(5) (as added: see note 2 supra).
- 13 Ibid s 106(1) (amended by the Criminal Procedure and Investigations Act 1996 Sch 1 para 12). The amendment made by the Criminal Procedure and Investigations Act 1996 applies in relation to any alleged offence into which no criminal investigation has begun before 1 April 1997: see the Criminal Procedure and Investigations Act 1996 (Appointed Day No 6) Order 1997, SI 1997/2199. The Perjury Act 1911 has effect as if the Magistrates' Courts Act 1980 s 106 (as amended) were contained in the Perjury Act 1911: Magistrates' Courts Act 1980 s 106(2). See further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 712 et seq.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(1) CRIMINAL AND CIVIL JURISDICTION/(i) Criminal Jurisdiction/B. COMMITTAL PROCEEDINGS/671. Depositions.

### 671. Depositions.

A deposition complies with the conditions for its admissibility in committal proceedings<sup>1</sup> if:

- 175 (1) a copy of it is sent<sup>2</sup> to the prosecutor<sup>3</sup>;
- 176 (2) before the magistrates' court<sup>4</sup> begins to inquire into the offence concerned as examining justices<sup>5</sup> a copy of the deposition is given, by or on behalf of the prosecutor, to each of the other parties to the proceedings<sup>6</sup>; and
- 177 (3) if the deposition refers to any other document<sup>7</sup> as an exhibit, the copy given to any other party to the proceedings under head (2) above must be accompanied by a copy of that document or by such information as may be necessary to enable the party to whom it is given to inspect that document or a copy of it<sup>8</sup>.

So much of any deposition as is admitted in evidence must, unless the court commits the accused for trial<sup>9</sup> or the court otherwise directs, be read aloud at the hearing, and where the court so directs an account must be given orally of so much of any deposition as is not read aloud<sup>10</sup>. Any document or other object referred to as an exhibit and identified in a deposition admitted in evidence must be treated as if it had been produced as an exhibit and identified in court by the person whose evidence is taken as the deposition<sup>11</sup>.

- 1 For the meaning of 'committal proceedings' see PARA 668 ante.
- 2 Ie under the Magistrates' Courts Act 1980 s 97A(9) (as added and amended): see PARA 675 post.
- 3 Ibid s 5C(1)(a) (s 5C added by the Criminal Procedure and Investigations Act 1996 s 47, Sch 1 para 3). The Magistrates' Courts Act 1980 s 5C (as added) applies in relation to any alleged offence into which no criminal investigation has begun before 1 April 1997: see the Criminal Procedure and Investigations Act 1996 (Appointed Day No 6) Order 1997, SI 1997/2199.
- 4 For the meaning of 'magistrates' court' see PARA 583 ante.
- 5 As to the use of the expression 'examining justices' see PARA 524 note 9 ante.
- 6 Magistrates' Courts Act 1980 s 5C(1)(b), (2) (as added: see note 3 supra).
- 7 For these purposes, 'document' means anything in which information of any description is recorded: ibid s 5C(6) (as added: see note 3 supra).
- 8 Ibid s 5C(1)(c), (3) (as added: see note 3 supra).
- 9 Ie by virtue of ibid s 6(2) (as substituted): see PARA 676 post.
- 10 Ibid s 5C(4) (as added: see note 3 supra).
- 11 Ibid s 5C(5) (as added: see note 3 supra).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(1) CRIMINAL AND CIVIL JURISDICTION/(i) Criminal Jurisdiction/B. COMMITTAL PROCEEDINGS/672. Statements.

## **672. Statements.**

A statement complies with the conditions for its admissibility in committal proceedings<sup>1</sup> if:

- 178 (1) before the committal proceedings begin, the prosecutor notifies the magistrates' court<sup>2</sup> and each of the other parties to the proceedings that he believes that the statement (a) might be admissible<sup>3</sup> as evidence, by virtue of the exceptions to the prohibition on hearsay evidence relating to first hand hearsay and business documents, if the case came to trial<sup>4</sup>; and (b) would not other than by virtue of those exceptions<sup>5</sup> be admissible as evidence if the case came to trial<sup>6</sup>;
- 179 (2) the prosecutor's belief is based on information available to him at the time he makes the notification, he has reasonable grounds for his belief, and he gives the reasons for his belief when he makes the notification<sup>7</sup>; and
- 180 (3) when the court or a party is notified as mentioned in head (1) above, a copy of the statement is given, by or on behalf of the prosecutor, to the court or the party concerned<sup>8</sup>.

So much of any statement as is in writing and is admitted in evidence must, unless the court commits the accused for trial<sup>9</sup> or the court otherwise directs, be read aloud at the hearing, and, where the court so directs, an account must be given orally of so much of any statement as is not read aloud<sup>10</sup>.

1 Magistrates' Courts Act 1980 s 5D(1) (s 5D added by the Criminal Procedure and Investigations Act 1996 s 47, Sch 1 para 3). The Magistrates' Courts Act 1980 s 5D (as added) applies in relation to any alleged offence into which no criminal investigation has begun before 1 April 1997: see the Criminal Procedure and

Investigations Act 1996 (Appointed Day No 6) Order 1997, SI 1997/2199. For the meaning of 'committal proceedings' see PARA 668 ante.

- 2 For the meaning of 'magistrates' court' see PARA 583 ante.
- 3 le by virtue of the Criminal Justice Act 1988 s 23 or s 24 (both as amended).
- 4 Magistrates' Courts Act 1980 s 5D(2)(a) (as added: see note 1 supra).
- 5 le otherwise than by virtue of the Criminal Justice Act 1988 s 23 or s 24 (both as amended).
- 6 Magistrates' Courts Act 1980 s 5D(2)(b) (as added: see note 1 supra).
- 7 Ibid s 5D(3) (as added: see note 1 supra).
- 8 Ibid s 5D(4) (as added: see note 1 supra).
- 9 le by virtue of ibid s 6(2) (as substituted): see PARA 676 post.
- 10 Ibid s 5D(5) (as added: see note 1 supra).

## UPDATE

### 672 Statements

NOTES--See *R (on the application of the Crown Prosecution Service) v City of London Magistrates' Court* [2006] All ER (D) 37 (Apr).

NOTES 3, 5--Criminal Justice Act 1988 ss 23, 24 repealed: Criminal Justice Act 2003 Sch 37 Pt 6.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(1) CRIMINAL AND CIVIL JURISDICTION/(i) Criminal Jurisdiction/B. COMMITTAL PROCEEDINGS/673. Other documents.

### 673. Other documents.

The following documents<sup>1</sup> are admissible as evidence by a magistrates' court<sup>2</sup> inquiring into an offence as examining justices<sup>3</sup>:

- 181 (1) any document which by virtue of any enactment<sup>4</sup> is evidence<sup>5</sup> in such proceedings<sup>6</sup>;
- 182 (2) any document which by virtue of any enactment is admissible, or may be used, or is to be admitted or received, in or as evidence in such proceedings<sup>7</sup>;
- 183 (3) any document which by virtue of any enactment may be considered in such proceedings<sup>8</sup>;
- 184 (4) any document whose production constitutes proof in such proceedings by virtue of any enactment<sup>9</sup>;
- 185 (5) any document by the production of which evidence may be given in such proceedings by virtue of any enactment<sup>10</sup>.

So much of any such document as is admitted in evidence must, unless the court commits the accused for trial<sup>11</sup> or the court otherwise directs, be read aloud at the hearing, and where the court so directs an account must be given orally of so much of any document as is not read aloud<sup>12</sup>.

1 For these purposes, 'document' means anything in which information of any description is recorded: Magistrates' Courts Act 1980 s 5E(4) (s 5E added by the Criminal Procedure and Investigations Act 1996 s 47, Sch 1 para 3). The Magistrates' Courts Act 1980 s 5E (as added) applies in relation to any alleged offence into which no criminal investigation has begun before 1 April 1997: see the Criminal Procedure and Investigations Act 1996 (Appointed Day No 6) Order 1997, SI 1997/2199.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 Magistrates' Courts Act 1980 s 5E(4) (as added: see note 1 supra). As to the use of the expression 'examining justices' see PARA 524 note 9 ante.

4 References to any enactment include references to any provision of the Magistrates' Courts Act 1980: s 5E(2)(b) (as added: see note 1 supra).

5 References to evidence include references to prima facie evidence: *ibid* s 5E(2)(a) (as added: see note 1 supra).

6 *Ibid* s 5E(1)(a) (as added: see note 1 supra).

7 *Ibid* s 5E(1)(b) (as added: see note 1 supra).

8 *Ibid* s 5E(1)(c) (as added: see note 1 supra).

9 *Ibid* s 5E(1)(d) (as added: see note 1 supra).

10 *Ibid* s 5E(1)(e) (as added: see note 1 supra).

11 *Ie* by virtue of *ibid* s 6(2) (as substituted): see PARA 676 post.

12 *Ibid* s 5E(3) (as added: see note 1 supra).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(1) CRIMINAL AND CIVIL JURISDICTION/(i) Criminal Jurisdiction/B. COMMITTAL PROCEEDINGS/674. Proof by production of copy.

#### **674. Proof by production of copy.**

Where a statement, deposition or document is admissible in evidence in committal proceedings<sup>1</sup>, it may be proved by the production of the statement, deposition or document, or a copy<sup>2</sup> of it or the material part of it<sup>3</sup>. A copy may be produced whether or not the statement, deposition or document is still in existence<sup>4</sup>. It is immaterial for these purposes how many removes there are between a copy and the original<sup>5</sup>.

1 *Ie* by virtue of the Magistrates' Courts Act 1980 s 5B (as added and amended), s 5C (as added), s 5D (as added) or s 5E (as added): see PARAS 669-673 ante. For the meaning of 'committal proceedings' see PARA 668 ante.

2 For these purposes, 'copy', in relation to a statement, deposition or document, means anything onto which information recorded in the statement, deposition or document has been copied, by whatever means and whether directly or indirectly: *ibid* s 5F(4) (s 5F added by the Criminal Procedure and Investigations Act 1996 s 47, Sch 1 para 3). The Magistrates' Courts Act 1980 s 5F (as added) applies in relation to any alleged offence into which no criminal investigation has begun before 1 April 1997: see the Criminal Procedure and Investigations Act 1996 (Appointed Day No 6) Order 1997, SI 1997/2199.

3 Magistrates' Courts Act 1980 s 5F(1) (as added: see note 2 supra).

4 *Ibid* s 5F(2) (as added: see note 2 supra).

5 *Ibid* s 5F(3) (as added: see note 2 supra).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(1) CRIMINAL AND CIVIL JURISDICTION/(i) Criminal Jurisdiction/B. COMMITTAL PROCEEDINGS/675. Summons or warrant as to committal proceedings.

**675. Summons or warrant as to committal proceedings.**

Where a justice of the peace for any commission area<sup>1</sup> is satisfied that:

- 186 (1) any person in England or Wales is likely to be able to make on behalf of the prosecutor a written statement containing material evidence, or produce on behalf of the prosecutor a document or other exhibit likely to be material evidence, for the purposes of proceedings before a magistrates' court<sup>2</sup> inquiring into an offence as examining justices<sup>3</sup>;
- 187 (2) the person will not voluntarily make the statement or produce the document or other exhibit<sup>4</sup>; and
- 188 (3) the magistrates' court mentioned in head (1) above is a court for the commission area concerned<sup>5</sup>,

the justice must issue a summons<sup>6</sup> directed to that person requiring him to attend before a justice at the time and place appointed in the summons to have his evidence taken as a deposition or to produce the document or other exhibit<sup>7</sup>. If a justice of the peace is satisfied by evidence on oath of the matters mentioned in heads (1) to (3) above, and also that it is probable that a such a summons would not procure the result required by it, the justice may instead of issuing a summons issue a warrant to arrest the person concerned and bring him before a justice at the time and place specified in the warrant<sup>8</sup>. A summons may also be issued if the justice is satisfied that the person concerned is outside the British Islands<sup>9</sup>, but no warrant may be issued unless the justice is satisfied by evidence on oath that the person concerned is in England or Wales<sup>10</sup>.

If:

- 189 (a) a person fails to attend before a justice in answer to such a summons<sup>11</sup>;
- 190 (b) the justice is satisfied by evidence on oath that he is likely to be able to make a statement or produce a document or other exhibit as mentioned in head (1) above<sup>12</sup>;
- 191 (c) it is proved on oath, or in such other manner as may be prescribed<sup>13</sup>, that he has been duly served with the summons and that a reasonable sum has been paid or tendered to him for costs and expenses<sup>14</sup>; and
- 192 (d) it appears to the justice that there is no just excuse for the failure<sup>15</sup>;

the justice may issue a warrant to arrest him and bring him before a justice at a time and place specified in the warrant<sup>16</sup>.

Where a summons<sup>17</sup> or a warrant<sup>18</sup> is issued and the summons or warrant is issued with a view to securing that a person has his evidence taken as a deposition, the time appointed in the summons or specified in the warrant must be such as to enable the evidence to be taken as a deposition before a magistrates' court begins to inquire into the offence concerned as examining justices<sup>19</sup>.

If any person attending or brought before a justice refuses without just excuse to have his evidence taken as a deposition, or to produce the document or other exhibit, the justice may commit him to custody until the expiration of such period not exceeding one month as may be



specified in the summons or warrant or until he sooner has his evidence taken as a deposition or produces the document or other exhibit<sup>20</sup>, or impose on him a fine<sup>21</sup>, or both<sup>22</sup>. Such a fine is deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction<sup>23</sup>.

If a person has his evidence so taken as a deposition, the chief executive to the justice<sup>24</sup> concerned must as soon as is reasonably practicable send a copy of the deposition to the prosecutor<sup>25</sup>. If a person so produces an exhibit which is a document, the chief executive to the justice concerned must as soon as is reasonably practicable send a copy of the document to the prosecutor<sup>26</sup>. If a person so produces an exhibit which is not a document, the chief executive to the justice concerned must as soon as is reasonably practicable inform the prosecutor of the fact and of the nature of the exhibit<sup>27</sup>.

1 As to commission areas see PARA 507 ante.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 Magistrates' Courts Act 1980 s 97A(1)(a) (s 97A added by the Criminal Procedure and Investigations Act 1996 s 47, Sch 1 para 8). The Magistrates' Courts Act 1980 s 97A (as added and amended) applies in relation to any alleged offence into which no criminal investigation has begun before 1 April 1997: see the Criminal Procedure and Investigations Act 1996 (Appointed Day No 6) Order 1997, SI 1997/2199. As to the use of the expression 'examining justices' see PARA 524 note 9 ante.

4 Magistrates' Courts Act 1980 s 97A(1)(b) (as added: see note 3 supra).

5 Ibid s 97A(1)(c) (as added: see note 3 supra).

6 An application for the issue of a summons or warrant under ibid s 97A (as added and amended) may be made by the applicant in person or by his counsel or solicitor: Magistrates' Courts Rules 1981, SI 1981/552, r 107(1) (amended by SI 1997/706; and SI 2000/3361). An application for the issue of such a summons may be made by delivering or sending the application in writing to the justices' chief executive for the magistrates' court: Magistrates' Courts Rules 1981, SI 1981/552, r 107(2) (amended by SI 1983/523; and SI 2001/610). As to summonses and warrants see PARAS 687-699 post.

7 Magistrates' Courts Act 1980 s 97A(2) (as added: see note 3 supra). As to the taking of depositions of reluctant witnesses see the Magistrates' Courts Rules 1981, SI 1981/552, r 4A (added by SI 1997/706; and amended by SI 2000/3361; and SI 2001/610).

8 Magistrates' Courts Act 1980 s 97A(3) (as added: see note 3 supra).

9 'The British Islands' means the United Kingdom, the Channel Islands and the Isle of Man: Interpretation Act 1978 s 5, Sch 1.

10 Magistrates' Courts Act 1980 s 97A(4) (as added: see note 3 supra).

11 Ibid s 97A(5)(a) (as added: see note 3 supra).

12 Ibid s 97A(5)(b) (as added: see note 3 supra).

13 Ie prescribed by rules made under ibid s 144 (as amended) (see PARA 588 ante): see s 150(1).

14 Ibid s 97A(5)(c) (as added: see note 3 supra).

15 Ibid s 97A(5)(d) (as added: see note 3 supra).

16 Ibid s 97A(5) (as added: see note 3 supra).

17 Ie under ibid s 97A(2) (as added): the text and notes 6-7 supra.

18 Ie under ibid s 97A(3), (5) (as added): the text to notes 8, 11-15 supra.

19 Ibid s 97A(6) (as added: see note 3 supra).

20 Ibid s 97A(7)(a) (as added: see note 3 supra).

21 The fine imposed must not exceed £2,500: ibid s 97A(7)(a) (as added: see note 3 supra).

22 Ibid s 97A(7)(b) (as added: see note 3 supra).

23 Ibid s 97A(8) (as added: see note 3 supra). Any reference to a sum adjudged to be paid by a conviction or order of a magistrates' court includes any costs, damages or compensation adjudged to be paid by the conviction or order of which the amount is ascertained by the conviction or order: s 150(3). The provisions of the Magistrates' Courts Act 1980 authorising a magistrates' court on conviction of an offender to pass a sentence or make an order instead of dealing with him in any other way must not be construed as taking away any power to order him to pay costs, damages or compensation: s 150(7).

24 As to the justices' chief executive see PARA 624 et seq ante.

25 Magistrates' Courts Act 1980 s 97A(9) (as added (see note 3 supra); and s 97A(9)-(11) amended by the Access to Justice Act 1999 s 90(1), Sch 13 paras 95, 111).

26 Magistrates' Courts Act 1980 s 97A(10) (as added (see note 3 supra) and amended (see note 25 supra)).

27 Ibid s 97A(11) (as added (see note 3 supra) and amended (see note 25 supra)).

## UPDATE

### **675-677 Summons or warrant as to committal proceedings ... Restrictions on reports of committal proceedings**

SI 1981/552 rr 4A, 4B, 5-8, 11, 107 replaced by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). See Pts 10 (committal for trial), 27 (witness statements), 28 (witness summonses and orders).

### **675 Summons or warrant as to committal proceedings**

TEXT AND NOTE 4--Now, head (2) it is in the interests of justice to issue a summons under this provision to secure the attendance of that person to give evidence or to produce the document or other exhibit: 1980 Act s 97A(1) (amended by the Serious Organised Crime and Police Act 2005 s 169(3)).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(1) CRIMINAL AND CIVIL JURISDICTION/(i) Criminal Jurisdiction/B. COMMITTAL PROCEEDINGS/676. Discharge or committal for trial.

### **676. Discharge or committal for trial.**

A magistrates' court<sup>1</sup> inquiring into an offence<sup>2</sup> as examining justices<sup>3</sup> must on consideration of the evidence: (1) commit the accused for trial if it is of opinion that there is sufficient evidence to put him on trial by jury for any indictable offence<sup>4</sup>; or (2) discharge him if it is not of that opinion and he is in custody for no other cause than the offence under inquiry<sup>5</sup>. A magistrates' court committing a person for trial must specify the place at which he is to be tried, and in selecting that place must have regard to the convenience of the defence, the prosecution and the witnesses, the expediting of the trial, and any direction given<sup>6</sup> by or on behalf of the Lord Chief Justice<sup>7</sup> with the concurrence of the Lord Chancellor<sup>8</sup>.

If a magistrates' court inquiring into an offence as examining justices is satisfied that all the evidence tendered by or on behalf of the prosecutor satisfies the conditions as to admissibility<sup>9</sup> it may commit the accused for trial for the offence without consideration of the contents of any statements, depositions or other documents<sup>10</sup>, and without consideration of any exhibits which are not documents, unless:

- 193 (a) the accused or one of the accused has no legal representative<sup>11</sup> acting for him in the case<sup>12</sup>; or
- 194 (b) a legal representative for the accused or one of the accused, as the case may be, has requested the court to consider a submission that there is insufficient evidence to put that accused on trial by jury for the offence<sup>13</sup>.

The court may commit a person for trial in custody<sup>14</sup>, that is to say, by committing him to custody there to be safely kept until delivered in due course of law<sup>15</sup>, or on bail in accordance with the Bail Act 1976, that is to say, by directing him to appear before the Crown Court for trial<sup>16</sup>. Where the court has committed a person to custody<sup>17</sup> then, if that person is in custody for no other cause, the court may, at any time before his first appearance before the Crown Court, grant him bail in accordance with the Bail Act 1976 subject to the duty to appear before the Crown Court for trial<sup>18</sup>.

Where a magistrates' court acting as examining justices commits any person for trial or determines to discharge him, the justices' chief executive<sup>19</sup> for the court must, on the day on which the committal proceedings<sup>20</sup> are concluded or the next day, cause to be displayed in a part of the court house to which the public has access a notice<sup>21</sup>:

- 195 (i) in either case giving that person's name, address, and age, if known<sup>22</sup>;
- 196 (ii) in a case where the court so commits him, stating the charge or charges on which he is committed and the court to which he is committed<sup>23</sup>;
- 197 (iii) in a case where the court determines to discharge him, describing the offence charged and stating that it has so determined<sup>24</sup>.

Such a notice must not contain the name or address of any person under the age of 18 years unless the justices in question have stated that in their opinion he would otherwise be mentioned in the notice and should be mentioned in it for the purpose of avoiding injustice to him<sup>25</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 As to the meaning of 'offence' see PARA 522 note 4 ante.

3 As to the use of the expression 'examining justices' see PARA 524 note 9 ante.

4 Magistrates' Courts Act 1980 s 6(1)(a) (s 6(1), (2) substituted by the Criminal Procedure and Investigations Act 1996 s 47, Sch 1 para 4). The amendment made by the Criminal Procedure and Investigations Act 1996 applies in relation to any alleged offence into which no criminal investigation has begun before 1 April 1997: see the Criminal Procedure and Investigations Act 1996 (Appointed Day No 6) Order 1997, SI 1997/2199.

The Magistrates' Courts Act 1980 s 6(1) (as substituted) is expressed to be subject to the provisions of the Magistrates' Courts Act 1980 and any other Act relating to the summary trial of indictable offences: s 6(1) (as so substituted).

As to the material to be sent to the court of trial see the Magistrates' Courts Rules 1981, SI 1981/552, r 11 (amended by SI 1982/523; SI 1992/729; SI 1992/2072; SI 1994/1481; SI 1997/706; and SI 2001/610). The magistrates' court which commits a person for trial must remind him of his right to object within 14 days of being committed to a statement or deposition being read as evidence at the trial without oral evidence being given by the person who made the statement or deposition, and without the opportunity to cross-examine that person: see the Magistrates' Courts Rules 1981, SI 1981/552, r 8 (substituted by SI 1997/706). As to the duty of the prosecutor to notify a party of his right to object to a statement or deposition being read as evidence at the trial if he is committed when serving on them the evidence to be tendered in committal proceedings see the Magistrates' Courts Rules 1981, SI 1981/552, r 4B (added by SI 1997/706; and amended by SI 2001/610).

5 Magistrates' Courts Act 1980 s 6(1)(b) (as substituted: see note 4 supra).

6 Ie under the Courts Act 1971 s 4(5) (repealed: see now generally the Supreme Court Act 1981 s 9 (as amended)).

7 As to the Lord Chief Justice see COURTS.

8 Magistrates' Courts Act 1980 s 7. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

9 le it falls within *ibid* s 5A(3) (as added): see PARA 669 ante.

10 Where the accused has a solicitor acting for him in the case and where the court has been informed that all the evidence falls within *ibid* s 5A(2) (as added) (see PARA 669 ante) (Magistrates' Courts Rules 1981, SI 1981/552, r 6(1) (amended by SI 1983/523; and SI 1997/706)), a magistrates' court inquiring into an offence in committal proceedings must cause the charge to be written down, if this has not already been done, and read to the accused and must then ascertain whether he wishes to submit that there is, insufficient evidence to put him on trial by jury for the offence with which he is charged (Magistrates' Courts Rules 1981, SI 1981/552, r 6(2) (amended by SI 1997/706)). If the court is satisfied that the accused or, as the case may be, each of the accused does not wish to make such a submission it must, after receiving any written evidence falling within the Magistrates' Courts Act 1980 s 5A(3) (as added), determine whether or not to commit the accused for trial without consideration of the evidence, and where it determines not to so commit the accused it must proceed in accordance with the Magistrates' Courts Rules 1981, SI 1981/552, r 7 (as amended) (see note 12 *infra*): r 6(3) (amended by SI 1997/706).

11 For the meaning of 'legal representative' see PARA 658 note 4 ante.

12 Magistrates' Courts Act 1980 s 6(2)(a) (as substituted: see note 4 *supra*). A magistrates' court inquiring into an offence as examining justices, having ascertained (1) that the accused has no legal representative acting for him in the case; or (2) that the accused's legal representative has requested the court to consider a submission that there is insufficient evidence to put the accused on trial by jury for the offence with which he is charged, as the case may be, must permit the prosecutor to make an opening address to the court, if he so wishes, before any evidence is tendered: Magistrates' Courts Rules 1981, SI 1981/552, r 7(2) (r 7(2)-(7) substituted by SI 1997/706). After such opening address, if any, the court must cause evidence to be tendered in accordance with the Magistrates' Courts Act 1980 ss 5B(4), 5C(4), 5D(5) and s 5E(3) (all as added), that is to say by being read out aloud, except where the court otherwise directs or to the extent that it directs that an oral account be given of any of the evidence: Magistrates' Courts Rules 1981, SI 1981/552, r 7(3) (as so substituted). The court may view any exhibits produced before the court and may take possession of them: r 7(4) (as so substituted). After the evidence has been tendered the court must hear any submission which the accused may wish to make as to whether there is sufficient evidence to put him on trial by jury for any indictable offence: r 7(5) (as so substituted). The court must permit the prosecutor to make a submission in reply to any submission made by the accused in pursuance of r 7(5) (as substituted), or where the accused has not made any such submission but the court is nevertheless minded not to commit him for trial: r 7(6) (as so substituted). After hearing any submission made in pursuance of r 7(5) (as substituted) or r 7(6) (as substituted) the court must, unless it decides not to commit the accused for trial, cause the charge to be written down, if this has not already been done, and, if the accused is not represented by counsel or a solicitor, must read the charge to him and explain it in ordinary language: r 7(7) (as so substituted).

13 Magistrates' Courts Act 1980 s 6(2)(b) (as substituted: see note 4 *supra*).

14 'Commit to custody' means commit to prison or, where any enactment authorises or requires committal to some other place of detention instead of committal to prison, to that other place: *ibid* s 150(1).

15 *Ibid* s 6(3)(a). Section 6(3) is expressed to be subject to the Bail Act 1976 s 4 (as amended) (general right to bail) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1170) and the Magistrates' Courts Act 1980 s 41 (restriction on grant of bail in treason) (see PARA 712 note 6 *post*).

16 *Ibid* s 6(3)(b). Where his release on bail is conditional on his providing one or more surety or sureties and, in accordance with the Bail Act 1976 s 8(3) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1172), the court fixes the amount in which the surety is to be bound with a view to his entering into his recognisance subsequently in accordance with s 8(4), (5) or s 8(6) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1172) the court must in the meantime commit the accused to custody in accordance with the Magistrates' Courts Act 1980 s 6(3)(a): s 6(3).

17 le in accordance with *ibid* s 6(3)(a): see the text and notes 14-15 *supra*.

18 *Ibid* s 6(4).

19 As to the justices' chief executive see PARA 624 et seq ante.

20 For the meaning of 'committal proceedings' see PARA 668 ante.

21 Magistrates' Courts Act 1980 s 6(5) (amended by the Access to Justice Act 1999 s 90(1), Sch 13 paras 95, 96). The Magistrates' Courts Act 1980 s 6(5) (as amended) is expressed to be subject to the Sexual Offences (Amendment) Act 1976 s 4 (as amended; prospectively repealed) (anonymity of complainant in rape, etc cases): Magistrates' Courts Act 1980 s 6(5) (amended by the Criminal Justice Act 1988 s 170(1), Sch 15 paras 65, 66).

22 Magistrates' Courts Act 1980 s 6(5)(a). See note 21 *supra*.

23 *Ibid* s 6(5)(b). See note 21 *supra*.

24 *Ibid* s 6(5)(c). See note 21 *supra*.

25 *Ibid* s 6(6) (amended by the Criminal Justice Act 1991 s 68, Sch 8 para 6(1)(a)).

## UPDATE

### **675-677 Summons or warrant as to committal proceedings ... Restrictions on reports of committal proceedings**

SI 1981/552 rr 4A, 4B, 5-8, 11, 107 replaced by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). See Pts 10 (committal for trial), 27 (witness statements), 28 (witness summonses and orders).

### **676 Discharge or committal for trial**

NOTE 6--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

TEXT AND NOTE 19--Reference to the justices' chief executive is now to the designated officer: Magistrates' Courts Act 1980 s 6(5) (amended by the Courts Act 2003 Sch 8 para 202).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(1) CRIMINAL AND CIVIL JURISDICTION/(i) Criminal Jurisdiction/B. COMMITTAL PROCEEDINGS/677. Restrictions on reports of committal proceedings.

### **677. Restrictions on reports of committal proceedings.**

It is unlawful to publish<sup>1</sup> in Great Britain<sup>2</sup> a written report, or to include in a relevant programme<sup>3</sup> for reception in Great Britain a report, of any committal proceedings<sup>4</sup> in England and Wales containing any matter other than any permitted<sup>5</sup> matter<sup>6</sup>. A magistrates' court must, on an application for the purpose made with reference to any committal proceedings by the accused or one of the accused, as the case may be, order that this does not apply to reports of those proceedings<sup>7</sup>. However, where in the case of two or more accused one of them objects to the making of such an order, the court must make the order if, and only if, it is satisfied, after hearing the representations of the accused, that it is in the interests of justice to do so<sup>8</sup>.

It is not unlawful to publish or include in a relevant programme a report of committal proceedings containing any matter other than any permitted matter where<sup>9</sup>:

- 198 (1) the magistrates' court determines not to commit the accused, or determines to commit none of the accused for trial, after it so determines<sup>10</sup>;
- 199 (2) the court commits the accused or any of the accused for trial, after the conclusion of his trial or, as the case may be, the trial of the last to be tried<sup>11</sup>.

Where at any time during the inquiry the court proceeds to try summarily the case of one or more of the accused<sup>12</sup>, while committing the other accused or one or more of the other accused for trial, it is not unlawful to publish or include in a relevant programme as part of a report of the summary trial, after the court determines so to proceed, a report of so much of the committal proceedings containing any such matter as takes place before the determination<sup>13</sup>.

The following matters may be contained in a report of committal proceedings published or included in a relevant programme without an order<sup>14</sup> before the time authorised<sup>15</sup>:

- 200 (a) the identity of the court and the names of the examining justices<sup>16</sup>;
- 201 (b) the names, addresses, occupations and ages of the parties and witnesses and the ages of the accused and witnesses<sup>17</sup>;
- 202 (c) the offence or offences, or a summary of them, with which the accused is or are charged<sup>18</sup>;
- 203 (d) the names of the legal representatives<sup>19</sup> engaged in the proceedings<sup>20</sup>;
- 204 (e) any decision of the court to commit the accused or any of the accused for trial, and any decision of the court on the disposal of the case of any accused not committed<sup>21</sup>;
- 205 (f) where the court commits the accused or any of the accused for trial, the charge or charges, or a summary of them, on which he is committed and the court to which he is committed<sup>22</sup>;
- 206 (g) where the committal proceedings are adjourned, the date and place to which they are adjourned<sup>23</sup>;
- 207 (h) any arrangements as to bail on committal or adjournment<sup>24</sup>;
- 208 (i) whether a right to representation funded by the Legal Services Commission<sup>25</sup> as part of the Criminal Defence Service<sup>26</sup> was granted to the accused or any of the accused<sup>27</sup>.

If a report is published or included in a relevant programme in contravention of the provisions described above<sup>28</sup>, the following persons are liable on summary conviction to a fine<sup>29</sup>:

- 209 (A) in the case of a publication of a written report as part of a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical<sup>30</sup>;
- 210 (B) in the case of a publication of a written report otherwise than as part of a newspaper or periodical, the person who publishes it<sup>31</sup>;
- 211 (C) in the case of the inclusion of a report in a relevant programme, any body corporate which provides the service in which the programme is included and any person having functions in relation to the programme corresponding to those of an editor of a newspaper<sup>32</sup>.

1 For these purposes, 'publish', in relation to a report, means publish the report, either by itself or as part of a newspaper or periodical, for distribution to the public: Magistrates' Courts Act 1980 s 8(10).

2 For the meaning of 'Great Britain' see PARA 519 note 4 ante.

3 For these purposes, 'relevant programme' means a programme included in a programme service (within the meaning of the Broadcasting Act 1990 s 201 (see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 328)): Magistrates' Courts Act 1980 s 8(10) (definition added by the Broadcasting Act 1990 s 203(1), (3), Sch 20 para 29(1)(e), Sch 21).

4 For these purposes, 'committal proceedings', in relation to an information charging an indictable offence, are deemed to include any proceedings in the magistrates' court before the court proceeds to inquire into the information as examining justices; but where a magistrates' court which has begun to try an information summarily discontinues the summary trial in pursuance of the Magistrates' Courts Act 1980 s 25(2) (as amended) or s 25(6) (as amended) (see PARA 664 ante) and proceeds to inquire into the information as examining justices, that circumstance does not make it unlawful under s 8 (as amended) for a report of any proceedings on the information which was published, or included in a relevant programme, before the court

determined to proceed as aforesaid to have been so published or broadcast: s 8(8) (amended by the Broadcasting Act 1990 Sch 20 para 29). As to the laying of an information see PARA 681 et seq post. For the meaning of 'magistrates' court' see PARA 583 ante. As to the use of the expression 'examining justices' see PARA 524 note 9 ante.

5    le any matter permitted by the Magistrates' Courts Act 1980 s 8(4) (as amended): see the text to notes 12-27 infra.

6    Ibid s 8(1) (amended by the Broadcasting Act 1990 Sch 20 para 29). The Magistrates' Courts Act 1980 s 8(1) (as amended) is in addition to, and not in derogation from, the provisions of any other enactment with respect to the publication of reports and proceedings of magistrates' and other courts: s 8(7).

7    Ibid s 8(2) (amended by the Criminal Justice (Amendment) Act 1981 s 1(1), (2)). An order under the Magistrates' Courts Act 1980 s 8(2) (as amended) does not apply to reports of proceedings under s 8(2A) (as added) (see the text to note 8 infra), but any decision of the court to make or not to make such an order may be contained in reports published or included in a relevant programme before the time authorised by the s 8(3) (as amended) (see the text to notes 9-11 infra): s 8(2B) (added by the Criminal Justice (Amendment) Act 1981 s 1(4); and amended by the Broadcasting Act 1990 Sch 20 para 29(1)).

Except in a case where evidence is, with the consent of the accused, to be tendered in his absence under the Magistrates' Courts Act 1980 s 4(4)(b) (as amended) (see PARA 668 ante) (absence caused by ill health), a magistrates' court acting as examining justices must before admitting any evidence explain to the accused the restrictions on reports of committal proceedings imposed by s 8 (as amended) and inform him of his right to apply to the court for an order removing those restrictions: Magistrates' Courts Rules 1981, SI 1981/552, r 5(1) (amended by SI 1997/706). Where a magistrates' court has made an order under the Magistrates' Courts Act 1980 s 8(2) (as amended) removing restrictions on the reports of committal proceedings, such order must be entered in the register: Magistrates' Courts Rules 1981, SI 1981/552, r 5(2). Where the court adjourns any such proceedings to another day, the court must, at the beginning of any adjourned hearing, state that the order has been made: r 5(3). As to the duty to keep the register see PARA 628 ante.

8    Magistrates' Courts Act 1980 s 8(2A) (added by the Criminal Justice (Amendment) Act 1981 s 1(4)). See note 7 supra.

9    Magistrates' Courts Act 1980 s 8(3) (amended by the Broadcasting Act 1990 Sch 20 para 29).

10   Magistrates' Courts Act 1980 s 8(3)(a).

11   Ibid s 8(3)(b).

12   le under ibid s 25(3) (as amended) or s 25(7): see PARA 664 ante.

13   Ibid s 8(3) (as amended: see note 9 supra).

14   le an order under ibid s 8(2) (as amended): see the text and notes 1-7 supra.

15   Ibid s 8(4) (amended by the Broadcasting Act 1990 Sch 20 para 29). The text refers to the time authorised by the Magistrates' Courts Act 1980 s 8(3) (as amended): see the text to notes 9-11 supra.

16   Ibid s 8(4)(a).

17   Ibid s 8(4)(b).

18   Ibid s 8(4)(c).

19   For the meaning of 'legal representative' see PARA 658 note 4 ante.

20   Magistrates' Courts Act 1980 s 8(4)(d) (amended by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 25).

21   Magistrates' Courts Act 1980 s 8(4)(e).

22   Ibid s 8(4)(f).

23   Ibid s 8(4)(g).

24   Ibid s 8(4)(h).

25   As to the Legal Services Commission see LEGAL AID vol 65 (2008) PARA 17 et seq.

- 26 As to the Criminal Defence Service see LEGAL AID vol 65 (2008) PARA 120 et seq.
- 27 Magistrates' Courts Act 1980 s 8(4)(i) (amended by the Access to Justice Act 1999 s 24, Sch 4 paras 15, 16).
- 28 Ie in contravention of the Magistrates' Courts Act 1980 s 8 (as amended).
- 29 Ibid s 8(5) (amended by the Broadcasting Act 1990 Sch 20 para 29). The fine imposed must not exceed level 5 on the standard scale: Magistrates' Courts Act 1980 s 8(5) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. Proceedings for an offence under the Magistrates' Courts Act 1980 s 8 (as amended) may not be instituted except by or with the consent of the Attorney General: s 8(6). As to the Attorney General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 529.
- 30 Ibid s 8(5)(a).
- 31 Ibid s 8(5)(b).
- 32 Ibid s 8(5)(c) (substituted by the Broadcasting Act 1990 Sch 20 para 29).

## UPDATE

### **675-677 Summons or warrant as to committal proceedings ... Restrictions on reports of committal proceedings**

SI 1981/552 rr 4A, 4B, 5-8, 11, 107 replaced by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). See Pts 10 (committal for trial), 27 (witness statements), 28 (witness summonses and orders).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(1) CRIMINAL AND CIVIL JURISDICTION/(ii) Civil Jurisdiction/678. In general.

## **(ii) Civil Jurisdiction**

### **678. In general.**

The jurisdiction of a magistrates' court<sup>1</sup> in a civil proceeding depends on the existence of a statute giving jurisdiction in the matter<sup>2</sup>. Most but not all civil proceedings before magistrates are commenced by making a complaint<sup>3</sup>. Exceptions include most of the licensing work of magistrates<sup>4</sup> and family proceedings<sup>5</sup>. In the absence of express provision in any Act or the rules made under the Magistrates' Courts Act 1980<sup>6</sup> the magistrates' court having jurisdiction to deal with a complaint is the court appointed for the commission area<sup>7</sup> within which the act or omission<sup>8</sup> to which the complaint relates was done or made, or the matter to which the complaint relates arose<sup>9</sup>.

Where a complaint is made to a justice of the peace for any petty sessions area<sup>10</sup> upon which a magistrates' court acting for that area has power to make an order against any person<sup>11</sup>, the justice may issue a summons directed to that person requiring him to appear before the magistrates' court acting for that area to answer to the complaint<sup>12</sup>.

In any civil proceedings, a magistrates' court may disallow or order the legal or other representative concerned to meet the whole or part of any wasted costs<sup>13</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.



2 Thus, in order to found the jurisdiction of a magistrates' court over the recovery of a sum of money, it must be due under some statute that makes it recoverable on complaint: *LCC v Betts* [1936] 1 KB 430 at 433, [1936] 1 All ER 144 at 145, DC, per Talbot J.

3 The complaint procedure is laid down in the Magistrates' Courts Act 1980 ss 51-57 (as amended) (see PARA 681 et seq post), and the Magistrates' Courts Rules 1981, SI 1981/552, rr 4, 14, 16, 34. See also *Trathan v Trathan* [1955] 2 All ER 701 at 707, [1955] 1 WLR 805 at 812, DC, per Lord Merriman; *Bowen v Bowen* [1958] 1 All ER 770 at 772, [1958] 1 WLR 508 at 510, DC, per Lord Merriman (complaints to vary maintenance orders). As to the hearing of complaints see PARA 681 et seq post.

4 As to the procedure for application for a licence see LICENSING AND GAMBLING.

5 See the Magistrates' Courts Act 1980 s 65 (as amended) (see PARA 739 post); the Family Proceedings Courts (Children Act 1989) Rules 1991, SI 1991/1395 (as amended); the Family Proceedings Courts (Matrimonial Proceedings etc) Rules 1991, SI 1991/1991 (as amended); and CHILDREN AND YOUNG PERSONS; MATRIMONIAL AND CIVIL PARTNERSHIP LAW. As to family proceedings see PARA 739 et seq post.

6 The rules made under the Magistrates' Courts Act 1980 s 144 (as amended) (see PARA 588 ante): s 150(1).

7 As to commission areas see PARA 507 ante.

8 It is sufficient, in the case of an omission, that the act left undone ought to have been done either in that area or elsewhere: see the Magistrates' Courts Act 1980 s 52 (as amended); and PARA 526 ante.

9 See *ibid* s 52 (as amended); and PARA 526 ante.

10 As to petty sessions areas see PARA 591 et seq ante.

11 As to the application of the Magistrates' Courts Act 1980 s 51 where an attachment of earnings order is involved see the Attachment of Earnings Act 1971 s 19(4) (as amended); and PARA 845 post.

12 Magistrates' Courts Act 1980 s 51 (which is expressed to be subject to the provisions of the Magistrates' Courts Act 1980). As to the power to issue summonses see PARA 541 ante.

13 See *ibid* s 145A (as added and amended); and PARA 770 post.

In the application of the Magistrates' Courts Act 1980 to civil contempt proceedings under s 63(3) (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq), where the proceedings are taken of the court's own motion, s 51 (as amended) applies as if the complaint had been made against the person against whom the proceedings are taken: Contempt of Court Act 1981 s 17(2), Sch 3 para 1(1).

## UPDATE

### 678-680 Civil Jurisdiction

A magistrates' court may at any time, whether before or after beginning to hear a complaint, transfer the hearing to another magistrates' court (Magistrates' Courts Act 1980 s 57A(1) (s 57A added by the Courts Act 2003 s 48)) but if the court transfers the matter after it has begun to hear the evidence and the parties, the court to which the matter is transferred must begin hearing the evidence and the parties again (1980 Act ss 57A(2)). Section 57A does not apply to family proceedings (s 57A(3)) and the court's power to transfer a hearing must be exercised in accordance with any directions given under the 2003 Act s 30(3) (see PARA 583).

### 678 In general

NOTES--A justice has no general common law power to re-open a civil case: *R (on the application of Mathialagan) v Southwark LBC* [2004] EWCA Civ 1689, [2004] All ER (D) 179 (Dec).

TEXT AND NOTES 10-12--Replaced. Where a complaint relating to a person is made to a justice of the peace, the justice may issue a summons to the person requiring him to

appear before a magistrates' court to answer to the complaint: 1980 Act s 51 (substituted by the Courts Act 2003 s 47(1)).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(1) CRIMINAL AND CIVIL JURISDICTION/(ii) Civil Jurisdiction/679. Nature of civil jurisdiction.

### **679. Nature of civil jurisdiction.**

The civil or quasi-civil jurisdiction of magistrates' courts<sup>1</sup> includes jurisdiction as to the summary recovery of certain civil debts<sup>2</sup>, family proceedings<sup>3</sup>, the adoption<sup>4</sup> and care<sup>5</sup> of children, the care of aged and infirm persons<sup>6</sup>, enforcement of council tax and non-domestic rate<sup>7</sup>, and driving tests<sup>8</sup> and many other matters.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 See the Magistrates' Courts Act 1980 s 58 (as amended), s 96; and PARAS 826, 828 post. Among the money so recoverable (subject in some cases to limits on the amount) is money in respect of income tax, corporation tax and capital gains tax (see the Taxes Management Act 1970 s 65 (as amended); and INCOME TAXATION), the cost of appeals to the Crown Court (see the Administration of Justice Act 1970 s 41 (as amended), Sch 9 para 3 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2100), and damage by a ship to a harbour (see the Harbours, Docks and Piers Clauses Act 1847 s 75; and PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 754). As to the recovery of social security contributions in the magistrates' court see SOCIAL SECURITY AND PENSIONS. As to civil debts see PARA 826 post.

3 As to family proceedings see PARA 739 et seq post.

4 See CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 511.

5 See CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 247 et seq.

6 See the National Assistance Act 1948 s 47 (as amended); and SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARA 1074 et seq.

7 See the Local Government Finance Act 1988 Pt III (ss 41-67) (as amended); the Local Government Finance Act 1992 Pt I (ss 1-69) (as amended); and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARAS 193 et seq, 313 et seq.

8 See the Road Traffic Act 1988 s 90(1), (2); and ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 453.

## **UPDATE**

### **678-680 Civil Jurisdiction**

A magistrates' court may at any time, whether before or after beginning to hear a complaint, transfer the hearing to another magistrates' court (Magistrates' Courts Act 1980 s 57A(1) (s 57A added by the Courts Act 2003 s 48)) but if the court transfers the matter after it has begun to hear the evidence and the parties, the court to which the matter is transferred must begin hearing the evidence and the parties again (1980 Act ss 57A(2)). Section 57A does not apply to family proceedings (s 57A(3)) and the court's power to transfer a hearing must be exercised in accordance with any directions given under the 2003 Act s 30(3) (see PARA 583).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(1) CRIMINAL AND CIVIL JURISDICTION/(ii) Civil Jurisdiction/680. Power to make orders on judgment.

### **680. Power to make orders on judgment.**

A magistrates' court has power (1) to order money to be paid periodically by one person ('the debtor') to another ('the creditor') by means of a qualifying maintenance order or another<sup>1</sup>; (2) to make an order on complaint<sup>2</sup> for the payment of any money recoverable summarily as a civil debt<sup>3</sup>; (3) to make orders other than for the payment of money<sup>4</sup>; and (4) in its discretion to make an order as to costs<sup>5</sup>.

1 See the Magistrates' Courts Act 1980 ss 59-62 (as amended); and PARAS 820-825 post.

2 As to complaints see PARA 681 post.

3 See *ibid* s 58 (as amended); and PARA 826 post.

4 See *ibid* s 63 (as amended); and PARA 827 post.

### **UPDATE**

### **UPDATE**

### **678-680 Civil Jurisdiction**

A magistrates' court may at any time, whether before or after beginning to hear a complaint, transfer the hearing to another magistrates' court (Magistrates' Courts Act 1980 s 57A(1) (s 57A added by the Courts Act 2003 s 48)) but if the court transfers the matter after it has begun to hear the evidence and the parties, the court to which the matter is transferred must begin hearing the evidence and the parties again (1980 Act ss 57A(2)). Section 57A does not apply to family proceedings (s 57A(3)) and the court's power to transfer a hearing must be exercised in accordance with any directions given under the 2003 Act s 30(3) (see PARA 583).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(i) Information or Complaint/681. Distinction between information and complaint.

## **(2) PROCEDURE**

### **(i) Information or Complaint**

### **681. Distinction between information and complaint.**

Proceedings before a magistrates' court<sup>1</sup> are begun by an information or complaint<sup>2</sup>. The distinction<sup>3</sup> in summary jurisdiction procedure between an information and a complaint is that an information is laid where the person charged has committed, or is alleged to have committed, an offence for which he may be punished, while a complaint is made where the person in regard to whom it is made is liable, or alleged to be liable, to have an order made upon him either to pay money or to do or refrain from doing any act<sup>4</sup>. It is inadvisable for a

complaint to be heard by justices at the same time as an information against the same defendant<sup>5</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 See the Magistrates' Courts Act 1980 s 1 (as amended) (information), s 51 (complaint); and PARAS 522, 678 ante. See also *R (Futter) v Cork County Justices* [1917] 2 IR 430. Magistrates' courts have functions in relation to the granting of bail after arrest before the issue of an information: see the Magistrates' Courts Act 1980 s 43 (as substituted and amended), s 43B (as added).

For the form of information see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Form 1. For the form of complaint see Sch 2 Form 98. See PARA 505 note 12 ante. That which marks the beginning or 'institution' of proceedings is not the issue of a summons or warrant, but the laying or making of an information or complaint: *Brooks v Bagshaw* [1904] 2 KB 798, DC; and see *R v Manchester Stipendiary Magistrate, ex p Hill* [1983] 1 AC 328, sub nom *Hill v Anderton* [1982] 2 All ER 963, HL. Where the accused appears before a magistrates' court and answers the charge without objection to the absence of a summons or information, the conviction will not be vitiated (*R v Shaw* (1865) 34 LJMC 169; and see *R v Hughes* (1879) 4 QBD 614, CCR); but a magistrates' court has no general power to proceed in a civil matter without there having been a formal complaint (see PARA 678 ante).

In the application of the Magistrates' Courts Act 1980 to civil contempt proceedings under s 63(3) (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq), where the proceedings are taken of the court's own motion, s 51 applies as if a complaint had been made against the person against whom the proceedings are taken: Contempt of Court Act 1981 s 17(2), Sch 3; and see CONTEMPT OF COURT.

The trial of an offence of failing to surrender to custody of a person released by a court on bail in criminal proceedings is initiated by the court's own motion following an express invitation by the prosecution and not by way of an information: *Schiavo v Anderton* [1987] QB 20, [1986] 3 All ER 10, DC; as explained in *Practice Note* [1987] 1 All ER 128, [1987] 1 WLR 79, DC.

3 Certain pre-1952 enactments use the word 'complaint' in contexts where the word 'information' would more correctly have been used. However, in any enactment conferring power on a magistrates' court to deal with an offence, or to issue a summons or warrant against a person suspected of an offence, on the complaint of any person, for references to a complaint there must be substituted references to an information: Magistrates' Courts Act 1980 s 50. As to the meaning of 'enactment' see PARA 505 note 16 ante. As to the meaning of 'offence' see PARA 522 note 4 ante. As to summonses and warrants see PARA 687 et seq post.

The effect of what is now s 50 is that an information should be used in preference to or in substitution for a complaint, notwithstanding that the earlier statute uses the word 'complaint', provided that the matter being dealt with is an offence: see *Northern Ireland Trailers Ltd v Preston Corpn* [1972] 1 All ER 260 at 263, [1972] 1 WLR 203 at 207, DC, per Lord Widgery CJ. However, this cannot cure the incorrect use of these terms: *R v Nottingham Justices, ex p Brown* [1960] 3 All ER 625 at 627, [1960] 1 WLR 1315 at 1318, DC, per Lord Parker CJ.

4 See the Magistrates' Courts Act 1952 ss 1(1), 52 (as amended), s 53(3); and PARAS 522, 526 ante, 761 post; cf *Re Dillon* (1859) 11 ICLR 232 at 238 per Hayers J. Where under any enactment an appeal lies to a magistrates' court against the decision or order of a local authority or other authority, or other body or person, the appeal is by way of complaint for an order: Magistrates' Courts Rules 1981, SI 1981/552, r 34; and see *Edelsten v LCC* [1918] 1 KB 81, DC.

5 *R v Dunmow Justices, ex p Anderson* [1964] 2 All ER 943, [1964] 1 WLR 1039, DC.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### 681-686 Information or Complaint

As to the power of a magistrates' court to make rulings and give directions at pre-trial hearings in criminal cases that are to be tried summarily, see the Magistrates' Court Act 1980 ss 8A-8D; and PARA 681A.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(i) Information or Complaint/681A. Pre-trial hearings.

### **681A. Pre-trial hearings.**

At a pre-trial hearing<sup>1</sup>, a magistrates' court may make a ruling, on an application by a party to the case or of the court's own motion, as to (1) any question as to the admissibility of evidence; (2) any other question of law relating to the case, if

- 212 (a) where the accused is not legally represented, the court has asked whether he wishes to be granted a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service, and if he does, has decided whether or not to grant him that right<sup>2</sup>;
- 213 (b) the court has given the parties an opportunity to be heard<sup>3</sup>, and
- 214 (c) it appears to the court that it is in the interests of justice to make the ruling<sup>4</sup>.

A pre-trial ruling made by a magistrates' court remains binding until the case is disposed of or is sent to the Crown Court<sup>5</sup>.

There are restrictions on reporting pre-trial hearings<sup>6</sup> and the publishing of anything in contravention of such restrictions is an offence<sup>7</sup>.

1 A hearing is a pre-trial hearing if (1) it relates to an information (a) which is to be tried summarily, and (b) to which the accused has pleaded not guilty, and (2) it takes place before the start of the trial: Magistrates' Courts Act 1980 s 8A(1) (ss 8A-8D added by the Courts Act 2003 Sch 3). For the purposes of head (2), the start of a summary trial occurs when the court begins to hear evidence from the prosecution at the trial, or to consider whether to exercise its power under the Mental Health Act 1983 s 37(3) (see MENTAL HEALTH vol 30(2) (Reissue) PARA 491 NOTE 3): 1980 Act s 8A(2).

2 Ibid s 8A(3)(a), (4)-(6).

3 Ibid s 8A(3)(b), (4), (6).

4 Ibid s 8A(3)(c), (4), (6).

5 See ibid s 8B(1), (2), (6). A magistrates' court may discharge or vary a pre-trial ruling on application by a party to the case (where there has been a material change of circumstances) or, where it is in the interests of justice, of its own motion: see s 8B(3)-(5).

6 See ibid s 8C.

7 See ibid s 8D.

## **UPDATE**

### **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

## 681-686 Information or Complaint

As to the power of a magistrates' court to make rulings and give directions at pre-trial hearings in criminal cases that are to be tried summarily, see the Magistrates' Court Act 1980 ss 8A-8D; and PARA 681A.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(i) Information or Complaint/682. Form of information and complaint.

### 682. Form of information and complaint.

Subject to any provision of the Magistrates' Courts Act 1980 and any other enactment<sup>1</sup>, an information or complaint<sup>2</sup> need not be in writing<sup>3</sup> or on oath<sup>4</sup>, although it is customary for a magistrates' court<sup>5</sup> to require writing, and forms are prescribed for the purpose<sup>6</sup>. Where a warrant is issued to bring a person charged with an offence<sup>7</sup> before a magistrates' court<sup>8</sup>, the information must, however, be in writing and substantiated on oath<sup>9</sup>, and where a warrant is issued for disobedience of a summons the information must either be substantiated on oath or in such other manner as may be prescribed<sup>10</sup>, or satisfy certain conditions<sup>11</sup>, and the complaint must be substantiated on oath<sup>12</sup>. Where instead of proceeding in the absence of the accused, the court adjourns or further adjourns the trial and proposes to issue a warrant for his arrest<sup>13</sup>, and the accused has been convicted, substantiation on oath is not necessary where the court proposes to disqualify him<sup>14</sup>. It is not necessary in an information or complaint to specify or negative an exception, exemption, proviso, excuse or qualification, whether or not it accompanies the description of the offence or matter of complaint contained in the enactment creating the offence or on which the complaint is founded<sup>15</sup>.

1 As to the meaning of 'enactment' see PARA 505 note 16 ante.

2 As to informations and complaints see PARA 681 ante.

3 As to the meaning of 'writing' see PARA 507 note 12 ante. An information in writing is laid, or a complaint in writing is made, when it is received at the office of the clerk to the justices: *R v Manchester Stipendiary Magistrate, ex p Hill* [1983] 1 AC 328, sub nom *Hill v Anderton* [1982] 2 All ER 963, HL. As a matter of practice an oral information should be addressed by the informant or complainant or his authorised agent to a justice of the peace or the clerk to the justices in person: *R v Manchester Stipendiary Magistrate, ex p Hill* [1983] 1 AC 328, sub nom *Hill v Anderton* [1982] 2 All ER 963, HL. An information is laid in time where it is fed into a computer at a police station which is linked to the court within the time limit but is printed out at the court after the expiry of the time limit: *R v Pontypridd Juvenile Court, ex p B* [1988] Crim LR 842, 153 JP 213, DC. As to justices' clerks see PARA 631 et seq ante.

4 Magistrates' Courts Rules 1981, SI 1981/552, r 4(2). As to the meaning of 'oath' see PARA 520 note 4 ante.

5 For the meaning of 'magistrates' court' see PARA 583 ante.

6 See the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Forms 1, 77 (as amended), 84 (informations), 98, 104, 107, 111 (complaints). See PARA 505 note 12 ante. The accused, brought before the court on arrest without warrant, is entitled to insist on an information, but he may waive his right: *Blake v Beech* (1876) 1 Ex D 320, DC.

7 As to the meaning of 'offence' see PARA 522 note 4 ante.

8 Ie under the Magistrates' Courts Act 1980 s 1 (as amended): see PARA 522 ante.

9 See *ibid* s 1(3); and PARA 522 ante.

10 Ie prescribed by rules made under *ibid* s 144 (as amended) (see PARA 588 post): s 150(1).

- 11 See *ibid* s 13(2) (as amended), s 13(2A), (2B) (as added); and PARA 693 post.
- 12 See *ibid* s 55(2); and PARA 693 post. A warrant under s 55 (see PARA 693 post) may not be issued for failure to answer a summons issued on a complaint for the recovery of a sum recoverable summarily as a civil debt: see s 55(8); and PARA 828 post. The requirement as to oath does not apply in relation to the application of the Magistrates' Courts Act 1980 to civil contempt proceedings under s 63(3) (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq), where the proceedings are taken of the court's own motion: see the Contempt of Court Act 1981 s 17(2), Sch 3 (amended by the Family Law Act 1996 s 66(1), Sch 8 para 50); and CONTEMPT OF COURT.
- 13 See the Magistrates' Courts Act 1980 s 13(1) (as amended); and PARA 693 post.
- 14 See *ibid* s 13(3) (as substituted), s 13(3A) (as added); and PARA 693 post.
- 15 Magistrates' Courts Rules 1981, SI 1981/552, r 4(3).

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### 681-686 Information or Complaint

As to the power of a magistrates' court to make rulings and give directions at pre-trial hearings in criminal cases that are to be tried summarily, see the Magistrates' Court Act 1980 ss 8A-8D; and PARA 681A.

### 682-683 Form of information and complaint, Who may lay information or make complaint

SI 1981/552 r 4 replaced by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'), Pt 7 (substituted by SI 2008/2076; and amended by SI 2008/3269).

### 682 Form of information and complaint

NOTE 6--The use of the wrong form does not prevent a magistrates' court from having jurisdiction: *R (on the application of the Chief Constable of North Wales Police) v Anglesey Justices* [2008] EWHC 309 (Admin), (2008) 172 JP 225 (form for laying information used instead of form for making complaint).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(i) Information or Complaint/683. Who may lay information or make complaint.

### 683. Who may lay information or make complaint.

In the great majority of cases any person<sup>1</sup>, whether interested or not, may act as informant or complainant<sup>2</sup>, but the right to do so is reserved in some instances by statute to a person

aggrieved<sup>3</sup>, and in other cases there can be no prosecution except by or with the consent of some specified authority<sup>4</sup>.

The information may be laid or complaint<sup>5</sup> made by the prosecutor or complainant in person, or by his counsel or solicitor or other person authorised in that behalf<sup>6</sup>.

1 In the absence of statutory restriction, no limitation is placed on the common law right of any person to take proceedings if an offence has been committed: *Snodgrass v Topping* (1952) 116 JP 332, DC; and see *Cole v Coulton* (1860) 29 LJMC 125; *R v Hicks* (1855) 24 LJMC 94; *Young v Peck* (1912) 77 JP 49, DC. As to officials prosecuting on behalf of a local body, with or without express authority see *Allman v Hardcastle* (1903) 67 JP 440, DC; *Giebler v Manning* [1906] 1 KB 709, DC; *Lake v Smith* (1911) 76 JP 71, DC; and *Duchesne v Finch* (1912) 76 JP 377, DC; and in relation to prosecutions by a local authority see the Local Government Act 1972 s 222(1)(a); and LOCAL GOVERNMENT vol 69 (2009) PARA 573.

2 As to the proper complainant in certain cases involving payments to children see PARA 825 post.

3 Proceedings for offences created by or under the Public Health Act 1936 may not, without the written consent of the Attorney General, be taken by any person other than a party aggrieved, or a council or a body whose function it is to enforce the provisions or byelaws in question, or by whom or by whose predecessors the byelaw in question was made: s 298. See also *Dodd v Pearson* [1911] 2 KB 383, DC; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 128. This condition similarly applies with regard to proceedings in relation to offences under the Town Police Clauses Act 1847, incorporated by the Public Health Act 1875: *Sheffield Corpn v Kitson* [1929] 2 KB 322, DC, not following *Jobson v Henderson* (1900) 64 JP 425, DC; *Savidge v Brierley*, noted in (1944) 108 JP Jo 121. A local authority must not generally delegate the right to prosecute to the police: *Kyle v Barbor* (1888) 52 JP 725, DC; *Oberst v Coombs* (1955) 53 LGR 316, 119 JP Jo 310, DC. The police may make a complaint where the relevant Act does not restrict the power to persons aggrieved: *Smith v Baker* [1960] 3 All ER 653, [1961] 1 WLR 38, DC.

However, notwithstanding anything in the Public Health Act 1936 s 298 or any other enactment, a constable may take proceedings in respect of an offence against a byelaw made by a local authority or any body that was the predecessor of a local authority under any enactment without the Attorney General's consent: see the Local Government (Miscellaneous Provisions) Act 1982 s 12; Public Health (Control of Disease) Act 1984 s 64 (as amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 569. As to the office of constable see generally POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

4 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1071. It is the duty of the clerk to the justices on application being made to him for the issue of the summons to see that any necessary consent has been obtained: see *Price v Humphries* [1958] 2 QB 353, [1958] 2 All ER 725, DC.

Where the Director of Public Prosecutions has the conduct of proceedings for an offence he may, at any time during the preliminary stages of the proceedings, give notice to the justices' chief executive for the court that he does not want the proceedings to continue, they are discontinued with effect from the giving of that notice, but may be revived by notice given by the accused (see the Prosecution of Offences Act 1980 s 23(1), (2), (3), (7) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1159). Where in the case of a person charged with an offence after being taken into custody without a warrant, at a time when no magistrates' court has been informed of the charge, the Director of Public Prosecutions may give the accused notice that the proceedings against him are discontinued (see s 23(4); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1159). The discontinuance of any proceedings does not prevent the institution of fresh proceedings in respect of the same offence: see s 23(9); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1159. The Secretary of State may set time limits in relation to the preliminary stages of criminal proceedings: see s 22 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1152.

As to justices' clerks see PARA 631 et seq ante. As to summonses generally see PARA 687 et seq post. As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq. As to the justices' chief executive see PARA 624 et seq ante. For the meaning of 'magistrates' court' see PARA 583 ante. As to the Secretary of State see PARA 530 note 8 ante.

As to the procedure to be followed when a devolution issue arises in relation to Wales, Scotland or Northern Ireland in proceedings in magistrates' courts see *Practice Note* [1999] 3 All ER 466. As to devolution issues in relation to Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

As to the procedure for giving hearsay evidence in civil proceedings in a magistrates' court see the Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999, SI 1999/681 (as amended); and PARA 729 post.

5 As to informations and complaints see PARA 681 ante.



6 Magistrates' Courts Rules 1981, SI 1981/552, r 4(1). In the case of a police prosecution, the information should be laid by the officer reporting the offence and the person accused of committing it or the chief constable, or some other member of the force who is authorised to lay an information; and failure to name the police officer laying the information does not invalidate it: *Rubin v DPP* [1990] 2 QB 80, [1989] 2 All ER 241, DC. Customs and Excise Commissioners are not prevented from conducting criminal proceedings where a customs officer has arrested the accused, drafted the charge and taken him to a police station where he has been formally charged by the police: *R v Stafford Justices, ex p Customs and Excise Comrs* [1991] 2 QB 339, [1991] 2 All ER 201, DC, approved in *R (on the application of Hunt) v Criminal Cases Review Commission* [2001] 2 WLR 319, [2001] 2 Cr App Rep 76, DC (Inland Revenue can prosecute following charging by the police). See also *R v Croydon Justices, ex p Holmberg* (1992) 157 JP 277, [1992] Crim LR 892, DC (proceedings brought by a local authority do not necessarily turn into police proceedings merely on the seeking of police assistance).

## **UPDATE**

### **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### **681-686 Information or Complaint**

As to the power of a magistrates' court to make rulings and give directions at pre-trial hearings in criminal cases that are to be tried summarily, see the Magistrates' Court Act 1980 ss 8A-8D; and PARA 681A.

### **682-683 Form of information and complaint, Who may lay information or make complaint**

SI 1981/552 r 4 replaced by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'), Pt 7 (substituted by SI 2008/2076; and amended by SI 2008/3269).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(i) Information or Complaint/684. Scope of information.

### **684. Scope of information.**

A magistrates' court may not proceed to the trial of an information that charges more than one offence<sup>1</sup>; but two or more informations may be set out in one document<sup>2</sup>. An information charging the commission of the same offence several times on the same occasion<sup>3</sup>, and even on a series of occasions<sup>4</sup>, is not defective, but it will not support more than one conviction<sup>5</sup>.

Where the accused is charged on several informations or where two or more accused are charged on separate informations and the facts are connected, the informations may be heard and determined together if the court thinks fit<sup>6</sup>. The consent of the prosecution and defence to joint trial should be sought but if this is not forthcoming, the court should rule as it thinks fit in the overall interests of justice<sup>7</sup>. It is a matter of discretion for the justices whether the trial of several informations should be tried by different benches<sup>8</sup>.

Absence of the accuseds' consent is not an automatic bar to joint trial since the justices may exercise their discretion to hear the informations together if it is fair and just to do so<sup>9</sup>. Where the prosecution and defence want separate trials, they should be slow to exercise their discretion in those circumstances<sup>10</sup>. Two or more persons may be charged in the same

information, but it is in the discretion of the court to hear the cases separately<sup>11</sup>. Where a summons and cross-summons arise out of informations founded on the same set of facts they may not be tried together, even with the consent of the parties<sup>12</sup>.

1 Magistrates' Courts Rules 1981, SI 1981/552, r 12(1). For exceptions see the Poor Rates Recovery Act 1862 s 1 (consolidation of proceedings for the recovery of rates), which provides that any number of local rates due from the same person may be included in the same complaint; and the Children and Young Persons Act 1933 s 14(1), (2) (as amended), which enables certain offences to be charged together or in the alternative subject to the provision, if this is done, that there is no liability to a separate penalty for each offence (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1277).

If, notwithstanding the Magistrates' Courts Rules 1981, SI 1981/552, r 12(1), it appears to the court at any stage in the trial of an information that the information charges more than one offence, the court must call upon the prosecutor to elect on which offence he desires the court to proceed, whereupon the offence of offences on which the prosecutor does not wish to proceed must be struck out of the information, and the court must then proceed to try that information afresh: r 12(3) (added by SI 1993/1183). If a prosecutor who is called upon to make such an election fails to do so, the court must dismiss the information: Magistrates' Courts Rules 1981, SI 1981/552, r 12(4) (added by SI 1993/1183). Where, after an offence or offences have been struck out of the information under the Magistrates' Courts Rules 1981, SI 1981/552, r 12(3) (as added), the accused requests an adjournment and it appears to the court that he has been unfairly prejudiced, it must adjourn the trial: r 12(5) (added by SI 1993/1183).

A document commencing the prosecution which contains a preamble setting out factual and legal material common to a number of offences which is incorporated by reference in paragraphs charging several offences, constitutes one document containing several informations and is consequently valid: *Shah v Swallow* [1984] 2 All ER 528, sub nom *DPP v Shah* [1984] 1 WLR 886, HL. See also *Carrington Carr Ltd v Leicestershire County Council* (1994) 158 JP 570, [1993] Crim LR 938, DC (informations each of which charges a single act but which are supported by several particulars to prove each offence are not bad for duplicity); *DPP v Dunn* (2001) 165 JP 130, [2001] 1 Cr App Rep 352, DC (information which charged harassment of two complainants was not duplicitous because the course of conduct was aimed at a definable group); *Holmes (t/a BR & M Holmes) v Ministry of Agriculture, Fisheries and Food* [2000] EHLR 369, (information charging failure to keep food preparation areas in clean condition which detailed all aspects of uncleanness relied on in relation to various parts of premises was not duplicitous). Where two informations are laid in respect of the same offences, there is no double jeopardy where the second was laid to remedy a defect in the first: *Broadbent v High* (1984) 149 JP 115, [1985] RTR 359, DC. As to informations see PARA 681 ante.

2 Magistrates' Courts Rules 1981, SI 1981/552, r 12(2). It is sometimes difficult to determine whether a particular section of a statute creates one offence or two, but a test may generally be found in the answer to the question whether evidence can be given of distinct acts, committed by the person charged, constituting two or more offences: cf *Milnes v Bale*, *Milnes v Lea* (1875) LR 10 CP 591 at 594 per Brett J. Where the offence is charged in the alternative it is clear that two offences are included, as where a tramway company was charged with the emission of smoke so as to constitute a ground of complaint to the passengers or the public: *Cotterill v Lempriere* (1890) 24 QBD 634, DC; see also *R v Slater, ex p Bowler* (1903) 67 JP 299, DC. A conviction for driving without due care and attention or without reasonable consideration for other persons using the road is bad (*R v Surrey Justices, ex p Witherick* [1932] 1 KB 450, DC); as also is an information alleging that a person did assault or beat another (*Jones v Sherwood* [1942] 1 KB 127, (1941) 106 JP 65, DC) and information charging the sale of food which was not of the nature or not of the substance or not of the quality demanded by the purchaser (*Bastin v Davies* [1950] 2 KB 579, [1950] 1 All ER 1095, DC; cf *Moore v Ray* [1951] 1 KB 98, [1950] 2 All ER 561, DC, where the High Court disapproved obiter of an information charging a sale of food not of the nature, substance and quality demanded by the purchaser). It has been held in Scotland that managing, or acting, or assisting in the management of a brothel are not alternative charges (*Vaughan v Smith* 1919 JC 9); but where the information charged the emission of smoke and steam, it was held that only one offence was committed (*Davis v Loach* (1886) 51 JP 118, DC; see *Smith v Perry* [1906] 1 KB 262, DC). Where the information was in respect of the emission of black smoke from certain chimneys, justices should not have allowed an objection that the summons was bad for not showing which chimney was complained of: *Barnes v Norris* (1876) 41 JP 150, DC. *R v Jones, ex p Thomas* [1921] 1 KB 632, DC, was applied in *Thompson v Knights* [1947] KB 336, [1947] 1 All ER 112, DC, when it was held that an information charging the driving of a motor vehicle whilst under the influence of drink or a drug was not bad, for the reason that the essential element was the driving when in a self-induced incapacity. Where a statute requires a person either to do one thing or another, an information is good where it charges him with failing to do that one thing or the other; eg that he failed to keep or cause to be kept an accurate record: *Field v Hopkinson* [1944] 1 KB 42, (1943) 42 LGR 22, DC. On the other hand an information charging a person with admitting and allowing to remain on betting office premises a person apparently under 18 has been held bad for duplicity: *Mallon v Allon* [1964] 1 QB 385, [1963] 3 All ER 843, DC. Similarly, an information was defective in alleging that the defendant was concerned in the management of premises used for the purpose of smoking cannabis or in dealing in cannabis: *Ware v Fox, Fox v Dingley* [1967] 1 All ER 100, [1967] 1 WLR 379, DC. An information alleging handling without more is not bad

for duplicity: *Griffiths v Freeman* [1970] 1 All ER 1117, [1970] 1 WLR 659, DC. See also *R v Nicklin* [1977] 2 All ER 444, [1977] 1 WLR 403, CA.

3 *R v Scott* (1863) 4 B & S 368; see further 63 JP Jo 546. An information is not bad for duplicity where a single charge includes facts indicating more than one act provided that collectively they can be described as components of a single activity: *Jemmison v Priddle* [1972] 1 QB 489, [1972] 1 All ER 539, DC (killing red deer without a game licence); *R v Wilson* (1979) 69 Cr App Rep 83, CA (count of theft from different departments of the same store); *R v Bristol Crown Court, ex p Willets* (1985) 149 JP 416, [1985] Crim LR 219, DC (information alleging possession of more than one obscene article for publication for gain); *Horrix v Malam* (1983) 148 JP 30, [1984] RTR 112, DC (driving without due care and attention where accused was observed on two occasions two miles and ten minutes apart); *Cullen v Jardine* [1985] Crim LR 668, Times, 29 April, DC (felling 90 trees without a licence over a period of three days); *DPP v McCabe* (1992) 157 JP 443, [1992] Crim LR 885, DC (theft of 76 library books over a period of more than a year); and *Barton v DPP* [2001] EWHC Admin 223, 165 JP 779, DC (94 till thefts over a 12 month period regarded as a continuous offence). As to the joinder of offences or accused see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1221-1223.

4 *Onley v Gee* (1861) 30 LJMC 222, (1861) 25 JP 342; followed in *Joel v Barclay* [1937] 1 All ER 309, DC; and *Ex p Burnby* [1901] 2 KB 458, DC.

5 *R v Rawson* [1909] 2 KB 748, DC. See also note 3 supra.

6 *Chief Constable of Norfolk v Clayton* [1983] 2 AC 473, sub nom *Clayton v Chief Constable of Norfolk* [1983] 1 All ER 984, HL.

7 *Chief Constable of Norfolk v Clayton* [1983] 2 AC 473, sub nom *Clayton v Chief Constable of Norfolk* [1983] 1 All ER 984, HL.

8 *R v Sandwich Justices, ex p Berry* [1982] Crim LR 121, (1981) 74 Cr App Rep 132, DC.

9 *Chief Constable of Norfolk v Clayton* [1983] 2 AC 473, sub nom *Clayton v Chief Constable of Norfolk* [1983] 1 All ER 984, HL.

10 *R v Highbury Corner Magistrates' Court, ex p McGinley* (1986) 150 JP 257, DC.

11 *R v Cridland* (1857) 7 E & B 853; *R v Littlechild* (1871) LR 6 QB 293; *Macphail v Jones* [1914] 3 KB 239, DC; *R v Lipscombe, ex p Biggins* (1862) 26 JP 244. Where several persons were charged in one information, and the objection that each case ought to be taken separately was waived, a separate conviction against each was upheld: *Wells v Cheyney* (1871) 36 JP 198. A joint charge may be made against defendants separately summoned, and the defendants may be tried together: *Re Brighton Stipendiary Magistrate* (1893) 9 TLR 522, DC.

12 *R v Epsom Justices, ex p Gibbons* [1984] QB 574, [1983] 3 All ER 523, DC, distinguishing *Chief Constable of Norfolk v Clayton* [1983] 2 AC 473, sub nom *Clayton v Chief Constable of Norfolk* [1983] 1 All ER 984, HL.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### 681-686 Information or Complaint

As to the power of a magistrates' court to make rulings and give directions at pre-trial hearings in criminal cases that are to be tried summarily, see the Magistrates' Court Act 1980 ss 8A-8D; and PARA 681A.

### 684 Scope of information

NOTE 1--See *Mohindra v DPP; Browne v Chief Constable of Greater Manchester* [2004] EWHC 490 (Admin), (2004) 168 JP 448 (information alleging failure to comply with

requirement to provide information leading to identification of driver was not duplicitous even though nature of obligation varied).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(i) Information or Complaint/685. Description of offence.

### **685. Description of offence.**

The offence should be described in ordinary language, avoiding as far as possible technical terms<sup>1</sup>, and without necessarily stating all the elements of the offence but giving such particulars as may be necessary for giving reasonable information of the nature of the charge<sup>2</sup>, and, in statutory offences, the statement must refer to the section of the statute, or the rule, order, regulation, byelaw or other instrument creating the offence<sup>3</sup>. The recital of a common law offence usually concludes with the words 'against the peace, etc' or 'contrary to common law'.

1 It was decided in *Lomas v Peek* [1947] 2 All ER 574, 112 JP 13, DC, that the words 'knowingly and wilfully' are technical terms and their omission from an information charging an offence under the Betting Act 1853 s 3 (now repealed), did not invalidate a conviction; but the attention of the court seems not to have been called to this decision when, in *Waring v Wheatley* (1951) 115 JP 630, [1951] WN 569, DC, it was held that the omission of the word 'wilfully' from an information charging the contravention of an order made by a local authority under the Town Police Clauses Act 1847 s 21 (as amended), made the conviction based on it bad. As to informations see PARA 681 ante.

2 See the Magistrates' Courts Rules 1981, SI 1981/552, r 100(1). Thus, it is proper to charge a handling of goods simpliciter, although in the ordinary way particulars should be given to enable the accused to understand the ingredients of the charge: *Griffiths v Freeman* [1970] 1 All ER 1117, [1970] 1 WLR 659, DC. See also *Onley v Gee* (1861) 30 LJM 222, (1861) 25 JP 342 (where precise date of offence is not known it is sufficient to specify dates between which the offence is alleged to have been committed). An application for reasonable particulars of the charge may be made at any stage after the charge is preferred: *R v Aylesbury Justices, ex p Wisbey* [1965] 1 All ER 602, [1965] 1 WLR 339, DC. If the magistrates' court takes the view that the particulars given in the information are insufficient, the prosecution may be given the opportunity of giving better particulars then and there; and where the prosecution refused to do so and the magistrates' courts dismissed the information on that account the High Court refused to interfere: *Robertson v Rosenberg* (1951) 115 JP 128, (1951) 49 LGR 210, DC. See also *Atterton v Browne* [1945] KB 122, (1944) 43 LGR 13, DC; *Stephenson v Johnson* [1954] 1 All ER 369, [1954] 1 WLR 375, DC; and *Pointon v Cox* (1926) 91 JP 33, DC. Where all the necessary information, or material, is contained in a charge, the magistrates may make amendments to put the matter beyond doubt if there is any suggestion that the matter is not entirely clear: *Jevons v Cosmosair plc* (1998) 162 JP 68, DC.

3 See the Magistrates' Courts Rules 1981, SI 1981/552, r 100(2). Omission to state the section of an Act may invalidate a subsequent conviction: *Atterton v Browne* [1945] KB 122, (1944) 43 LGR 13, DC; *Hunter v Coombs* [1962] 1 All ER 904, [1962] 1 WLR 573, DC. See also *Jones v Thomas* [1987] RTR 111, [1987] Crim LR 133, DC (a reference to a statutory provision being 'as amended' where the provision was in fact substituted, was not fatal to an information).

## **UPDATE**

### **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### **681-686 Information or Complaint**

As to the power of a magistrates' court to make rulings and give directions at pre-trial hearings in criminal cases that are to be tried summarily, see the Magistrates' Court Act 1980 ss 8A-8D; and PARA 681A.

## 685 Description of offence

NOTE 2--In order to determine whether an information is unfair the magistrates are permitted to consider relevant extraneous material such as the evidence given up to that point and the material provided by way of advance information: *Dacre Son & Hartley Ltd v North Yorkshire CC* [2005] 3 EG 118, DC.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(i) Information or Complaint/686. Defects and variance in information or complaint.

## 686. Defects and variance in information or complaint.

No objection is allowed to any information or complaint<sup>1</sup> for any defect in it in substance or in form<sup>2</sup>, or for any variance between it and the evidence adduced on behalf of the prosecutor or complainant at the hearing of the information or complaint<sup>3</sup>. Not every discrepancy may be cured by amendment: some informations are so fundamentally defective that they cannot be cured<sup>4</sup>, and some defects are so trivial that they do not require amendment<sup>5</sup>. The rest must be amended or dismissed. A magistrates' court may cause the information or complaint to be amended<sup>6</sup>, and whenever a variance between a summons or warrant appears to have misled the defendant the court must, on the defendant's application, adjourn the hearing<sup>7</sup>.

1 As to informations and complaints see PARA 681 ante.

2 This does not allow the court to convict on a bad information without amendment: *Hunter v Coombs* [1962] 1 All ER 904, [1962] 1 WLR 573, DC. It has, however, been applied to a mis-spelling of the defendant's name (*Dring v Mann* (1948) 112 JP 270, 92 Sol Jo 272, DC; *Allan v Wiseman* [1975] RTR 217, [1975] Crim LR 37, DC), the deletion of superfluous words (*Rogerson v Stephens* [1950] 2 All ER 144, 48 LGR 644, DC), the omission of a reference to the section of the Act creating the offence (*R v Doncaster Justices, ex p Doncaster Corp'n* [1962] Crim LR 839, 106 Sol Jo 879, DC), and the omission of the date on which the information was laid (*R v Godstone Justices, ex p Secretary of State for the Environment* [1974] Crim LR 110, DC).

3 Magistrates' Courts Act 1980 s 123(1). See eg where information may be amended to bring offence within the six month time limit under the Magistrates' Courts Act 1980 s 127(1) (see PARA 589 ante): *R v Blackburn Justices, ex p Holmes* (1999) 164 JP 163, [2000] Crim LR 300, DC. See also *Jevons v Cosmosair plc* (1998) 162 JP 68, DC (where there is a problem about a date an amendment should normally be allowed).

In the application of the Magistrates' Courts Act 1980 to civil contempt proceedings under s 63(3) (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq), where the proceedings are taken of the court's own motion s 123 applies as if a complaint had been made against the person against whom the proceedings are taken (Contempt of Court Act 1981 s 17(2), Sch 3 para 1(1)); and the words 'adduced on behalf of the prosecutor or complainant' are omitted (Sch 3 para 1(3)).

4 Eg where the information discloses no offence in law: *Garman v Plaice* [1969] 1 All ER 62, [1969] 1 WLR 19, DC. The correct approach to be adopted by justices when determining whether an information disclosed an offence not known to law was to look at the information as a whole: *DPP v Short* [2001] EWHC Admin 885, [2001] All ER (D) 385 (Oct). If the defective information is good enough to identify the alleged misdoing it may be amended as long as it continues to allege the same misdoing: *Simpson v Roberts* (1984) Times, 21 December, DC.

The Magistrates' Courts Act 1980 s 123 confers a wide discretion on justices to amend an information, and that discretion should ordinarily be exercised in favour of amendment unless it would result in injustice to a defendant: see *DPP v Short* supra. The omission of any reference to the section of the Act creating the offence which would have led the accused to see and understand what he was charged with may sometimes be

incurable: see *Atterton v Browne* [1945] KB 122, (1944) 43 LGR 13, DC; and *R v Doncaster Justices, ex p Doncaster Corp* [1962] Crim LR 839, 106 Sol Jo 879, DC. For where such defects were curable see *Thornley v Clegg* [1982] RTR 405, [1982] Crim LR 523, DC (where information followed precisely the words of the section justices right to allow amendment); *New Southgate Metals Ltd v Islington London Borough Council* [1996] Crim LR 334, [1996] COD 114, DC (incorrect year of Act did not mislead); *Meek v Powell* [1952] 1 KB 164, [1952] 1 All ER 347, DC (accused charged under repealed statute); *Jones v Thomas* [1987] RTR 111, [1987] Crim LR 133, DC (a reference to a statutory provision being 'as amended' where the provision was in fact substituted, was not fatal to an information).

Where the variance between the information and the evidence is such that a different offence is disclosed from that charged the defect is incurable: *Martin v Pridgeon* (1859) 1 E & E 778; *Loadman v Cragg* (1862) 26 JP 743; *R v Brickhall* (1864) 33 LJM 156. See also *Lawrence v Same* [1968] 2 QB 93, [1968] 1 All ER 1191, DC. But even this may be the subject of amendment if no injustice is done (*R v Newcastle-upon-Tyne Justices, ex p John Bryce (Contractors) Ltd* [1976] 2 All ER 611, [1976] 1 WLR 517, DC; *R v Scunthorpe Justices, ex p McPhee and Gallagher* (1998) 162 JP 635, (1998) Times, 10 March, DC; *R v Thames Magistrates' Court, ex p Stevens* (2000) 164 JP 233, [2000] COD 211, DC).

It is not permissible to substitute the name of a different person for the one named in the information: *City of Oxford Tramway Co v Sankey* (1890) 54 JP 564, DC (cannot substitute name of company for that of the manager); *R v Greater Manchester Justices, ex p Aldi GmbH & Co KG* (1994) 159 JP 717, (1994) Times, 28 December, DC (name of a different company); *Marco (Croydon) Ltd (t/a A & J Bull Containers) v Metropolitan Police Comr* [1984] RTR 24, [1983] Crim LR 395, DC (name of another company).

5 Eg a minor misdescription of premises or date where the defendant could not be prejudiced: *Hutchinson (Cinemas) Ltd v Tyson* (1969) 134 JP 202, [1970] Crim LR 350, DC. See also *Wright v Nicholson* [1970] 1 All ER 12, [1970] 1 WLR 142, DC; and *Creek v Peck and Jones* (1983) 147 JP 537, DC (information alleging theft of parts of bicycle from place A did not require amendment, despite bicycle being stolen from place A but parts being taken from place B).

6 Thus the information should be amended, not dismissed, where in a dispute between employer and employee the employer is wrongly described (*Whittle v Frankland* (1862) 2 B & S 49), or where ownership of property is incorrectly stated (*Ralph v Hurrell* (1875) 32 LT 816, DC), or the actual offence disclosed by the evidence has not been properly charged (*Bannister v Sullivan* (1904) 68 JP 390, DC), or the road in which the offence took place is incorrectly named (*Darnell v Holliday* [1973] RTR 276, [1973] Crim LR 366, DC), or the place of the offence is not accurately expressed (*Moulder v Judd* [1974] Crim LR 111), or where the words 'motor lorry' were used instead of 'tanker' (*Turberville v Wyer, Bryan Motor Co Ltd v Wyer* [1977] RTR 29, DC).

7 See the Magistrates' Courts Act 1980 s 123(2); and PARA 689 post.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### 681-686 Information or Complaint

As to the power of a magistrates' court to make rulings and give directions at pre-trial hearings in criminal cases that are to be tried summarily, see the Magistrates' Court Act 1980 ss 8A-8D; and PARA 681A.

### 686 Defects and variance in information or complaint

NOTE 4--See *R (on the application of James) v DPP* [2004] EWHC 1663 (Admin), (2004) 168 JP 596.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/ (ii) Summons or Warrant/687. Justices' discretion to grant process.

## (ii) Summons or Warrant

### 687. Justices' discretion to grant process.

When an information or complaint<sup>1</sup> is laid or made before him, a justice has a discretion in granting or withholding process<sup>2</sup>, but his decision to withhold must be reached without consideration of extraneous and extra-judicial matters<sup>3</sup>, otherwise, in the event of the matter being one within his jurisdiction, he can be compelled by order to issue process on the information or complaint<sup>4</sup>. Conversely, the grant of a summons by a justice without his having applied his mind to it is a dereliction of duty<sup>5</sup>. A magistrate has power to hear a proposed defendant, but the defendant has no right to address him<sup>6</sup>. A complaint for an order adversely affecting a person's rights should not be heard unless a summons has been served on that person<sup>7</sup>. The discretion of a justices' clerk to grant a summons<sup>8</sup> is seemingly governed by the same considerations. There is no obligation on the clerk to give reasons for declining to issue a summons<sup>9</sup>.

If a justice decides to grant process on an information, he has a further discretion whether to issue a summons or a warrant of arrest<sup>10</sup>. A warrant<sup>11</sup> may be issued for the arrest of a person charged with an indictable offence<sup>12</sup> at any time notwithstanding that a summons has previously been issued<sup>13</sup>.

1 As to informations and complaints see PARA 681 ante.

2 *R v Kennedy* (1902) 86 LT 753, DC; *R v Bros* (1901) 66 JP 54, DC. As to the discretion of justices see also CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 923; JUDICIAL REVIEW vol 61 (2010) PARAS 622, 710. Where one or more informations have already been laid against a defendant the magistrate should only accede to a private prosecutor's request to issue another summons in respect of the same incident with great caution: *R v Tower Bridge Metropolitan Stipendiary Magistrate, ex p Chaudhry* [1994] QB 340, [1994] 1 All ER 44, DC. There is no rule that a summons has to issue within any particular time after the laying of an information but it should not be unreasonably delayed to the prejudice of the defendant: see *R v Fairford Justices, ex p Brewster* [1976] QB 600, [1975] 2 All ER 757, DC. Justices have a judicial discretion to decline to proceed to hear the summons where the delay in service of the summons produces substantial prejudice to the accused or is unconscionable: *R v Watford Justices, ex p Outrim* [1983] RTR 26, [1982] Crim LR 593, DC. However, a lengthy delay in effecting service in a summary case does not necessarily warrant a stay of the proceedings on the ground that the possibility of a fair trial has been prejudiced: *R v Canterbury and St Augustines Magistrates' Court, ex p Barrington* (1993) 158 JP 325, DC.

3 A summons is the result of a judicial act: *R v Wilson, ex p Battersea Borough Council* [1948] 1 KB 43 at 46-47, [1947] 2 All ER 569 at 570, DC, per Lord Goddard CJ. As the issuing of a summons is a judicial function it may not be delegated: *R v Manchester Stipendiary Magistrate, ex p Hill* [1983] 1 AC 328, sub nom *Hill v Anderton* [1982] 2 All ER 963, HL; *R v Gateshead Justices, ex p Tesco Stores Ltd* [1981] QB 470, [1981] 1 All ER 1027, DC. However, things specified in the Justices' Clerks Rules 1999, SI 1999/2784, r 3, Schedule paras 1-37, being things authorised to be done by, to or before a justices' clerk, may be done instead by, to or before a person appointed by a magistrates' courts committee to assist him, provided that that person has been specifically authorised by the justices' clerk for that purpose, and any reference in the Schedule to a justices' clerk is taken to include such a person: r 3(1). Similar provision is made in relation to the delegation of a justices' clerks powers in family proceedings: see the Family Proceedings Courts (Children Act 1989) Rules 1991, SI 1991/1395, r 32; and the Family Proceedings Courts (Matrimonial Proceedings etc) Rules 1991, SI 1991/1991, r 15 (as amended); and PARA 638 ante.

4 *R v Adamson* (1875) 1 QBD 201 at 205, DC, per Cockburn CJ. As to the issue of a mandatory order to compel the grant of process see JUDICIAL REVIEW vol 61 (2010) PARA 710 et seq.

5 *R v Brentford Justices, ex p Catlin* [1975] QB 455 at 464, [1975] 2 All ER 201 at 207, DC, per Lord Widgery CJ.

6 *R v West London Justices, ex p Klahn* [1979] 2 All ER 221, [1979] 1 WLR 933, DC. As to the power of the High Court to quash a summons see *R v Bury Magistrates, ex p Anderton* [1987] NLJ Rep 410, DC.

7 *R v Havering Justices, ex p Smith* [1974] 3 All ER 484, 73 LGR 15, DC.

8 See the Justices' Clerks Rules 1999, SI 1999/2784, r 2, Schedule para 2; and PARA 522 note 2 ante. As to justices' clerks see PARA 631 et seq ante.

9 *R v Worthing Justices, ex p Norvell* [1981] 1 WLR 413, [1981] Crim LR 778, DC.

10 See the Magistrates' Courts Act 1980 s 1(1); and PARA 522 ante. A warrant may not be issued in the first instance upon a complaint: see PARA 696 post.

11 Ie a warrant under *ibid* s 1 (as amended): see PARA 522 ante.

12 For the meaning of 'indictable offence' see PARA 653 ante.

13 Magistrates' Courts Act 1980 s 1(6). Such a warrant may not be issued for the arrest of a person who has attained the age of 18 years unless certain criteria are met: see s 1(4) (as amended); and PARA 522 ante. As to a person's age see PARA 738 post.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### 687 Justices' discretion to grant process

NOTE 2--See *R (on the application of Mayor and Burgesses of Newham LB) v Stratford Magistrates' Court* [2004] EWHC 2506 (Admin), (2004) 168 JP 658 (justices' discretion to refuse to issue summons in the form suggested by the prosecution should only be exercised where there was an abuse of process or impropriety); *R (on the application of Charlson) v Guildford Magistrates' Court* [2006] EWHC 2318 (Admin), [2007] 3 All ER 163, [2006] 1 WLR 3494 (justices failed to take into account relevant factors); and *Barry v Birmingham Magistrates' Court* [2009] EWHC 2571 (Admin), [2010] 1 Cr App Rep 160, [2009] All ER (D) 11 (Oct).

NOTES 3, 8--SI 1999/2784 rr 2, 3, Schedule paras 1-37 now Justices' Clerks Rules 2005, SI 2005/545, rr 2, 3, Schedule paras 1-36.

NOTE 3--For 'paras 1-37' read 'paras 1-36 and paras 44-71': Justices' Clerks Rules 2005, SI 2005/545, r 3(1) (amended by SI 2005/2796).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/ (ii) Summons or Warrant/688. Form and contents of summons.

### 688. Form and contents of summons.

Upon an information<sup>1</sup> being laid before a justice of the peace that any person has or is suspected of having committed an offence, the justice may, if he has jurisdiction<sup>2</sup>, issue a summons directed to that person requiring him to appear before a magistrates' court for the area to answer to the information<sup>3</sup>. The summons<sup>4</sup> must state shortly the matter of the



information or complaint<sup>5</sup>, and must state the time and place at which the person is required by the summons to appear<sup>6</sup>. A single summons may be issued against a person in respect of several informations or complaints, but each information or complaint must be separately stated, and a summons issued in this form has effect as several summonses, each issued in respect of one information or complaint<sup>7</sup>.

A summons must be signed by the justice issuing it or must state his name and be authenticated by the signature of the clerk of the court<sup>8</sup>. The justice's signature may be effected by a rubber stamp affixed by himself or by another authorised to do so or by anyone subject to the direction of the justice acting in accordance with an established practice<sup>9</sup>. The summons is not invalidated by reason of the justice who signed it dying or ceasing to hold office<sup>10</sup>. An information may be laid or a complaint made before a justices' clerk, who may issue a summons on it<sup>11</sup>.

No objection is allowed to any summons to procure the presence of the defendant for any defect in substance or form<sup>12</sup>. Any irregularity in the form or service of the summons, or the form or execution of the warrant<sup>13</sup>, is cured by the appearance of the party summoned or arrested<sup>14</sup>, but this does not apply in the case of a defendant who appears purely for the purpose of taking objection to an irregularity<sup>15</sup>. Two or more summonses may be issued in succession on the same information unless and until there has been a determination of the matter on its merits<sup>16</sup>.

1 As to informations see PARA 681 ante.

2 As to when the justice has jurisdiction see the Magistrates' Courts Act 1980 s 1(2); and PARAS 522-523 ante.

3 See *ibid* s 1(1)(a); and PARA 522 ante.

4 For forms of summons see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Forms 2, 99. See PARA 505 note 12 ante.

5 As to complaints see PARA 681 ante.

6 Magistrates' Courts Rules 1981, SI 1981/552, r 98(2). In a proper case, a summons may be made returnable on the day of its issue, especially where the person summoned is already before the court: *Olding v Olding* [1936] 3 All ER 189, DC. The usual practice is to make the summons returnable on a day when a magistrates' court is regularly held. The statutory provisions as to summoning offenders before a magistrates' court apply to corporations as well as to natural persons: see *Evans & Co Ltd v LCC* [1914] 3 KB 315, DC; and CORPORATIONS vol 9(2) (2006 Reissue) PARAS 1225-1226. As to the statement of offence to be contained in a summons see the Magistrates' Courts Rules 1981, SI 1981/552, r 100.

7 See *ibid* r 98(3).

8 *Ibid* r 98(1). See also *Dixon v Wells* (1890) 25 QBD 249, DC. The omission of the justices' signature from the copy served is a mere defect of form: *R v Hay Halkett, ex p Rush* [1929] 2 KB 431, DC. The signature of a summons by a justice who did not receive the complaint is an irregularity that is waived by appearance and making no objection to it: see *R v Fletcher* (1884) 48 JP 407, DC.

9 *R v Brentford Justices, ex p Catlin* [1975] QB 455, [1975] 2 All ER 201, DC. See also *Bennett v Brumfitt* (1867) LR 3 CP 28; *Blades v Lawrence* (1874) LR 9 QB 374; and *Goodman v J Eban Ltd* [1954] 1 QB 550, [1954] 1 All ER 763, CA.

10 See the Magistrates' Courts Act 1980 s 124; and PARA 860 post.

11 See the Justices' Clerks Rules 1999, SI 1999/2784, r 2, Schedule paras 1, 2; and PARA 522 note 2 ante.

12 See the Magistrates' Courts Act 1980 s 123(1) (which also applies to informations and complaints); and PARAS 686 ante, 689 post.

13 As to the execution of warrants see PARA 861 post.

14 *R v Berry* (1859) 28 LJMC 86, CCR; *Egginton v Pearl* (1875) 33 LT 428; *R v Hughes* (1879) 4 QBD 614, CCR; *Gray v Customs Comrs* (1884) 48 JP 343, DC; *Grimble & Co v Preston* [1914] 1 KB 270, DC. But

appearance will not of itself give justices jurisdiction where they have none: *Johnson v Colam* (1875) LR 10 QB 544, DC. As to the form of a warrant see PARA 695 post.

15 *Dixon v Wells* (1890) 25 QBD 249, DC; *Pearks, Gunston and Tee Ltd v Richardson* [1902] 1 KB 91, DC; *R v Garrett-Pegge, ex p Brown* [1911] 1 KB 880 at 893, DC, per Avory J.

16 *Brooks v Bagshaw* [1904] 2 KB 798 at 801, DC, per Lord Alverstone CJ; *Williams v Letheren* [1919] 2 KB 262, DC.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### 688 Form and contents of summons

NOTE 4--SI 1981/553 Sch 2 Forms 2, 99 revoked: SI 2003/1236.

NOTE 11--SI 1999/2784 r 2, Schedule paras 1, 2 now Justices' Clerks Rules 2005, SI 2005/545, r 2, Schedule paras 1, 2.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/ (ii) Summons or Warrant/689. Defects in summons or warrant and variance with evidence.

### 689. Defects in summons or warrant and variance with evidence.

No objection is allowed to any summons or warrant to procure the presence of the defendant for any defects in it in substance or form<sup>1</sup> or for any variance between it and the evidence adduced on behalf of the prosecutor or complainant at the hearing of the information or complaint<sup>2</sup>. If, however, it appears to a magistrates' court<sup>3</sup> that any variance between a summons or warrant and the evidence adduced on behalf of the prosecutor or complainant is such that the defendant has been misled by the variance, the court must adjourn the hearing<sup>4</sup> on the application of the defendant<sup>5</sup>.

1 As to the form of a summons see PARA 688 ante; and as to the form of a warrant see PARA 695 post.

2 Magistrates' Courts Act 1980 s 123(1). This provision applies also to an information or complaint: see PARA 686 ante. As to informations and complaints see PARA 681 ante.

In the application of the Magistrates' Courts Act 1980 to civil contempt proceedings under s 63(3) (as amended) (punishment by fine or committal for disobeying an order to do anything other than the payment of money or to abstain from doing anything) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq), where the proceedings are taken of the court's own motion s 123 applies as if a complaint had been made against the person against whom the proceedings are taken; and the words 'adduced on behalf of the prosecution or complainant' are omitted: Contempt of Court Act 1981 s 17(2), Sch 3 para 1(3); and see CONTEMPT OF COURT vol 9(1) (Reissue) PARA 478.

3 For the meaning of 'magistrates' court' see PARA 583 ante.

4 As to powers of remand see the Magistrates' Courts Act 1980 ss 10(4), 128 (both as amended); and PARAS 711, 716 post.

5 Ibid s 123(2). See *R v Norkett, ex p Geach* (1915) 139 LT Jo 316, DC; *Isaacs v Arlidge* (1917) 87 LJKB 347 at 350, DC, per Avory J; *Dring v Mann* (1948) 112 JP 270, DC.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/ (ii) Summons or Warrant/690. Service of summons.

### 690. Service of summons.

Service of a summons<sup>1</sup> issued by a justice of the peace on a person other than a corporation<sup>2</sup> may be effected: (1) by delivering it to the person to whom it is directed<sup>3</sup>; or (2) by leaving it for him with some person at his last known or usual place of abode<sup>4</sup>; or (3) by sending it by post in a letter addressed to him at his last known or usual place of abode<sup>5</sup>.

1 As to service of a summons on a corporation see PARA 666 ante. The general rules as to service of a summons under the Magistrates' Courts Rules 1981, SI 1981/552, r 99 (as amended) do not, however, apply to a judgment summons: r 99(9). A lengthy delay in effecting service in a summary case does not necessarily warrant a stay of the proceedings on the ground that the possibility of a fair trial has been seriously prejudiced: *R v Canterbury and St Augustines Magistrates' Court, ex p Barrington* (1993) 158 JP 325, DC. See also PARA 663 note 3 ante.

2 As to service of a summons or other document on a corporation see the Magistrates' Courts Rules 1981, SI 1981/552, r 99(3); and PARA 666 note 3 ante.

3 Ibid r 99(1)(a). Any summons or other document served in manner authorised by r 99(1), for the purposes of any enactment other than the Magistrates' Courts Act 1980 or the Magistrates Courts Rules 1981, SI 1981/552, requiring a summons or other document to be served in any particular manner, is deemed to have been as effectively served as if it had been served in that manner, and nothing in r 99 (as amended) renders invalid the service of a summons or other document in that manner: r 99(5). As to service of a summons on an application for an order under the Domestic Proceedings and Magistrates' Courts Act 1978 s 16 or s 17(1) (both repealed) see the Magistrates' Courts Rules 1981, SI 1981/552, r 99(7).

4 Ibid r 99(1)(b). See note 3 supra. The provisions as to service in the Summary Jurisdiction Act 1848 s 1 (repealed) required personal service or service by leaving the summons with some person for the person to whom it was directed 'at his last or most usual place of abode'. 'Known' was not included. The defendant's last place of abode means his then present place of abode, if he has any, or his last, if he has ceased to have any: *R v Evans and Yale* (1850) 19 LJMC 151 at 154 per Coleridge J. The last abode of a defendant who has ceased to reside in England, but has a place of abode abroad, is that in the foreign country: *R v Farmer* [1892] 1 QB 637, CA. But where a defendant has ceased to reside in England, and there is no evidence that he has acquired a place of abode in a foreign country, service at his last place of abode in England has been held to be good: *R v Webb* [1896] 1 QB 487, DC. *R v Farmer* supra and *R v Webb* supra were referred to in *Delombre v Fouquault* (1909) 44 LJO 263, where the rule was stated that where the departure from England is not to establish a new domicile, but merely to evade service, service may be effected at the man's last place of abode in England. It has been held that, where the summons is left with someone for the defendant, it is sufficient to leave a copy of the summons: *R v Chandler* (1811) 14 East 267. Service upon a person living in the building in which there is a shop belonging to the defendant, but in which the defendant does not himself reside, is insufficient: *R v Lilley, ex p Taylor* (1910) 75 JP 95. So is service by leaving a summons with the defendant's clerk at the defendant's lock-up office at which he has never resided: *R v Rhodes, ex p McVitte*, *R v Mullin, ex p McVitte* (1915) 85 LJKB 830, DC. A summons left at the defendant's place of business and not at his last or most usual place of abode is good service under the Town Police Clauses Act 1847 s 47 (as amended), and the Public Health Act 1875 ss 171, 267 (both as amended) (*R v Hastings Justices, ex p Mitchell* (1925) 89 JP Jo 86), or under the Public

Health (Control of Diseases) Act 1984 s 60. As to service under the London Building Acts (Amendment) Act 1939 see s 124 (as amended); *R v Mead* [1898] 1 QB 110, DC.

5 Magistrates' Courts Rules 1981, SI 1981/552, r 99(1)(c). See notes 3 *supra*. This rule has effect as if it provided also for the summons to be sent in the manner specified to an address given by the defendant for that purpose: see r 99(8). Such service by post is not, however, authorised in the case of: (1) a summons requiring the attendance of any person to give evidence or produce a document or thing (r 99(6)(a)); or (2) a summons issued under any enactment relating to the liability of members of the naval, military or air forces of the Crown for the maintenance of their wives and children whether legitimate or not (r 99(6)(b)).

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### 690 Service of summons

NOTE 5--See *Durham CC v North Durham Justices* [2004] EWHC 1073 (Admin), (2004) 168 JP 269 (justices had no discretion to require the prosecution to secure personal service).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/ (ii) Summons or Warrant/691. Proof of service.

### 691. Proof of service.

The service on any person of a summons, process, notice or document required or authorised to be served in any proceedings before a magistrates' court<sup>1</sup>, and the handwriting or seal of a justice of the peace or other person on any warrant etc issued or made in any such proceedings, may be proved in any legal proceedings by a document purporting to be a solemn declaration in the prescribed form<sup>2</sup> made before a justice of the peace, commissioner for oaths<sup>3</sup>, clerk of a magistrates' court<sup>4</sup> or county court registrar<sup>5</sup> or a sheriff<sup>6</sup> or sheriff clerk (in Scotland) or a clerk of petty sessions (in Northern Ireland)<sup>7</sup>. Alternatively the service<sup>8</sup> of any process or other document required or authorised to be served, and the proper addressing, pre-paying and posting or registration for the purposes of service of a letter containing such a document, and the place, date and time of posting or registration, may be proved in any magistrates' court proceedings by a document purporting to be a certificate<sup>9</sup> signed by the person by whom the service was effected or the letter posted or registered<sup>10</sup>. Such a certificate is only evidence that the rules for service have been observed, and is not binding on the magistrates, who may admit evidence of mis-service<sup>11</sup>.

If in any solemn declaration, certificate or other writing<sup>12</sup> made or given for the purpose of its being used<sup>13</sup> as evidence of the service of any document or the handwriting or seal of any person, a person makes a statement that he knows to be false in a material particular, or recklessly makes a statement that is false in a material particular, he is liable on summary conviction to imprisonment for a term not exceeding six months or a fine<sup>14</sup> or both<sup>15</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

- 2 For the prescribed forms of declaration see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Forms 142, 143. See PARA 505 note 12 ante.
- 3 As to commissioners for oaths see CIVIL PROCEDURE vol 11 (2009) PARA 1026.
- 4 As to the construction of references to the clerk of a magistrates' court see PARA 631 note 1 ante.
- 5 As to county court registrars see COURTS.
- 6 As to sheriffs see generally SHERIFFS.
- 7 Magistrates' Courts Rules 1981, SI 1981/552, r 67(1).
- 8 In the application of this provision to a witness summons, references to the service of any process include references to the payment or tender to the witness of his costs and expenses: *ibid* r 67(3). As to witness summonses see PARA 734 post.
- 9 For the forms of certificate see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, Sch 2 Forms 144, 145 (amended by SI 1992/729; and SI 2001/1149).
- 10 Magistrates' Courts Rules 1981, SI 1981/552, r 67(2).
- 11 *Maher v Gower (formerly Kubilius)* (1981) 3 FLR 287.
- 12 As to the meaning of 'writing' see PARA 507 note 12 ante.
- 13 *le* in pursuance of the rules made under the Magistrates' Courts Act 1980 s 144 (as amended) (see PARA 588 ante): s 150(1).
- 14 The fine must not exceed level 3 on the standard scale: *ibid* s 107 (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142.
- 15 Magistrates' Courts Act 1980 s 107.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### 691 Proof of service

NOTES 2, 9--SI 1981/553 Sch 2 Forms 142-145 revoked: SI 2003/1236.

NOTES 14, 15--1980 Act s 107 amended: Courts Act 2003 Sch 8 para 233.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/ (ii) Summons or Warrant/692. Service of judgment summons.

### 692. Service of judgment summons.

A judgment summons issued on a complaint<sup>1</sup> for failing to satisfy a judgment in respect of a sum enforceable as a civil debt<sup>2</sup> must be served on the judgment debtor personally<sup>3</sup> unless a justice of the peace is satisfied by evidence on oath that prompt personal service of the

summons is impracticable, in which event he may allow the summons to be served in such a way as he may think just<sup>4</sup>.

- 1 As to complaints see PARA 681 ante.
- 2 le issued under the Magistrates' Courts Act 1980 s 96: see PARA 828 post.
- 3 Magistrates' Courts Rules 1981, SI 1981/552, r 58(1). See further PARA 828 note 13 post.
- 4 Ibid r 58(1) proviso.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/ (ii) Summons or Warrant/693. Service and non-appearance.

### 693. Service and non-appearance.

If a summons has not been served, a justice may in his discretion issue a second summons<sup>1</sup>.

Where a summons has been issued, whether on information or complaint<sup>2</sup>, the court must not begin to try the information or to hear the complaint in the absence of the accused or defendant<sup>3</sup>, or where a summons has been issued on complaint, the court must not issue a warrant<sup>4</sup>, unless either it is proved to the satisfaction of the court, on oath or in such other manner as may be prescribed<sup>5</sup>, that the summons was served on the accused or defendant within what appears to the court to be a reasonable time<sup>6</sup> before the trial or adjourned trial or the hearing or adjourned hearing, or the accused or defendant has appeared on a previous occasion to answer to the information or complaint<sup>7</sup>.

Where a summons has been issued, the court must not issue a warrant for the arrest of the accused on his non-appearance<sup>8</sup> unless either<sup>9</sup>:

- 215 (1) it is proved to the satisfaction of the court, on oath<sup>10</sup> or in such other manner as may be prescribed<sup>11</sup>, that the summons was served on the accused within what appears to the court to be a reasonable time before the trial or adjourned trial<sup>12</sup>; or
- 216 (2) (a) the adjournment now being made is a second or subsequent adjournment of the trial<sup>13</sup>; (b) the accused was present on the last (or only) occasion when the trial was adjourned<sup>14</sup>; and (c) on that occasion the court determined the time for the hearing at which the adjournment is now being made<sup>15</sup>.

Where the court, instead of proceeding in the absence of the accused or the defendant, adjourns or further adjourns the trial or hearing, it may, if the complaint has been substantiated on oath<sup>16</sup>, issue a warrant for his arrest<sup>17</sup>.

A warrant for the arrest of any person who has attained the age of 18<sup>18</sup> must not be issued<sup>19</sup> unless: (i) the information has been substantiated on oath and the offence to which the warrant

relates is punishable with imprisonment<sup>20</sup>; or (ii) the court, having convicted the accused, proposes to impose a disqualification on him<sup>21</sup>.

A warrant for the arrest of any person who has not attained the age of 18 must not be issued<sup>22</sup> unless: (A) the information has been substantiated on oath<sup>23</sup>; or (B) the court, having convicted the accused, proposes to impose a disqualification on him<sup>24</sup>.

Where the court adjourns the trial: (aa) after having, either on that or on a previous occasion, received any evidence or convicted the accused without hearing evidence on his pleading guilty<sup>25</sup>; or (bb) after having on a previous occasion convicted the accused without hearing evidence on his pleading guilty<sup>26</sup>, the court must not issue a warrant for the arrest of the accused for non-appearance<sup>27</sup> unless it thinks it undesirable, by reason of the gravity of the offence, to continue the trial in the absence of the accused<sup>28</sup>.

Similarly, where the defendant to a complaint fails to appear at an adjourned hearing, the court must not issue a warrant for his arrest unless it is satisfied that he had adequate notice of the time and place of the adjourned hearing<sup>29</sup>.

1 See *Ex p Fielding* (1861) 25 JP 759. Where any enactment requires, expressly or by implication, that a summons in respect of an offence must be issued or served within a specified period after the commission of the offence, and service of the summons may under the rules made under the Magistrates' Courts Act 1980 s 144 (as amended) (see PARA 588 ante) (cf para 690 ante) be effected by post, then, if under the rules service of the summons is not treated as proved, but it is shown that a letter containing the summons was posted at such time as to enable it to be delivered in the ordinary course of post within that period, a second summons may be issued on the same information, and in this case the enactment has effect, in relation to that summons, as if the specified period were a period running from the return day of the original summons: ss 47, 150(1). See eg the Road Traffic Offenders Act 1988 s 1(1)(b) (as amended); and ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 1028. As to the meaning of 'enactment' see PARA 505 note 16 ante. As to the meaning of 'offence' see PARA 522 note 4 ante.

2 In the application of the Magistrates' Courts Act 1980 to civil contempt proceedings under s 63(3) (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq), where the proceedings are taken of the court's own motion, s 55 applies as if a complaint had been made against the person against whom the proceedings are taken: Contempt of Court Act 1981 s 17(2), Sch 3 para 1(1). As to informations and complaints see PARA 681 ante.

3 A party to any proceedings before a magistrates' court may be represented by a legal representative (Magistrates' Courts Act 1980 s 122(1) (amended by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 25)), and an absent party so represented is deemed not to be absent (Magistrates' Courts Act 1980 s 122(2)). Thus, the court has no jurisdiction to issue a warrant on the ground that he should have appeared himself: *R v Thompson* [1909] 2 KB 614, DC; *Bessell v Wilson* (1853) 22 LJMC 94; *R v Montgomery, ex p Long* (1910) 74 JP 110, DC. But a warrant may not be issued in the case of a civil debt (see PARA 682 note 12 ante), nor because of the failure of the defendant to appear at the adjourned hearing of the case in which he has given evidence (see the Magistrates' Courts Act 1980 s 55(6)). See also PARA 725 post.

4 As to the execution of warrants see PARA 861 ante; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 920. For forms of warrants in the case of informations see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Forms 31, 32. See PARA 505 note 12 ante. The provisions of the Indictable Offences Act 1848 as to backing warrants are applied to warrants of arrest issued under the Magistrates' Courts Act 1980 s 126 (as amended): see PARA 527 note 1 ante.

5 Ie prescribed by the rules made under *ibid* s 144 (as amended) (see PARA 588 ante): s 150(1).

6 The provision as to reasonable time should be observed in order to give the defendant an opportunity of being heard (cf *R v Stafford Justices* (1835) 5 Nev & MKB 94; *R v Anwyl, Merionethshire Justices, ex p Cookson* (1909) 73 JP 485), but the court is the judge of what is a reasonable time (*Re Williams* (1851) 21 LJMC 46; *R v Smith* (1875) LR 10 QB 604; *R v Cambridgeshire Justices* (1880) 44 JP Jo 168; *R (Lambe) v Louth Justices* [1914] 2 IR 54). In some cases the statute requires that a certain minimum period must elapse between the date of service and the date fixed for the hearing of the summons. See eg the hearing of a complaint for the enforcement of a civil debt where the period so fixed is not less than three days unless the debtor appears and consents to an immediate hearing: see the Magistrates' Courts Rules 1981, SI 1981/552, r 58(2); and PARA 828 note 13 post.

7 Magistrates' Courts Act 1980 ss 11(2), 55(3). For the power to proceed in the absence of the accused or defendant see PARA 701 post.

In the application of the Magistrates' Courts Act 1980 to civil contempt proceedings under s 63(3) (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq), whether the proceedings are taken of the court's own motion or by way of complaint for an order, the court must not begin to hear the complaint in the absence of the defendant or issue a warrant under s 55 unless either it is proved to the satisfaction of the court, on oath or in such other manner as may be prescribed, that the summons was served on him within what appears to the court to be a reasonable time before the hearing or adjourned hearing or the defendant has appeared on a previous occasion to answer to the complaint, or, having been arrested under the Family Law Act 1996 s 47 (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 988 et seq) in connection with the matter of the complaint, is at large after being remanded under s 47(7)(b) or s 47(10): Contempt of Court Act 1981 s 17(2), Sch 3 para 3 (amended by the Family Law Act 1996 s 66(1), Sch 8 para 50); Magistrates' Courts Act 1980 s 55(3).

8 le under ibid s 13 (as amended).

9 Ibid s 13(2) (amended by the Criminal Procedure and Investigations Act 1996 s 48(2), (4)).

10 As to the meaning of 'oath' see PARA 520 note 4 ante.

11 See note 5 supra.

12 Magistrates' Courts Act 1980 s 13(2) (as amended: see note 9 supra), s 13(2A) (added by the Criminal Procedure and Investigations Act 1996 s 48(3), (4)).

13 Magistrates' Courts Act 1980 s 13(2) (as amended: see note 9 supra), s 13(2B)(a) (s 13(2B) added by the Criminal Procedure and Investigations Act 1996 s 48(3), (4)).

14 Magistrates' Courts Act 1980 s 13(2) (as amended: see note 9 supra), s 13(2B)(b) (as added: see note 13 supra).

15 Magistrates' Courts Act 1980 s 13(2) (as amended: see note 9 supra), s 13(2B)(c) (as added: see note 13 supra).

16 In the application of the Magistrates' Courts Act 1980 to civil contempt proceedings under s 63(3) (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq), where the proceedings are taken of the court's own motion, where the court, instead of proceeding in the absence of the defendant, adjourns, or further adjourns, the hearing, the court may issue a warrant for his arrest: Contempt of Court Act 1981 s 17(2), Sch 3 para 1(2); Magistrates' Courts Act 1980 s 55(2).

17 Ibid s 13(1) (amended by the Magistrates' Courts (Procedure) Act 1998 s 3(1)), Magistrates' Courts Act 1980 s 55(2). Section 13(1) (as amended) is expressed to be subject to the provisions of s 13 (as amended). Section 55(2) is expressed to be subject to the provisions of s 55(3)-(8).

18 As to a person's age see PARA 738 post.

19 le issued under the Magistrates' Courts Act 1980 s 13 (as amended).

20 Ibid s 13(3)(a) (s 13(3) substituted by the Magistrates' Courts (Procedure) Act 1998 s 3(2)). References in the Magistrates' Courts Act 1980 to an offence punishable with imprisonment or punishable on summary conviction with imprisonment are to be construed without regard to any prohibition or restriction imposed by or under the Magistrates' Courts Act 1980 or any other Act on imprisonment of young offenders: s 150(6).

21 Ibid s 13(3)(b) (as substituted: see note 20 supra).

22 See note 19 supra.

23 Magistrates' Courts Act 1980 s 13(3A)(a) (s 13(3A) added by the Magistrates' Courts (Procedure) Act 1998 s 3(2)).

24 Magistrates' Courts Act 1980 s 13(3A)(b) (as added: see note 23 supra).

25 le on his pleading guilty under ibid s 9(3): see PARA 726 post.

26 le on his pleading guilty under ibid s 12(5) (as substituted): see PARA 706 post. Section 13 (as amended) does not apply to an adjournment on the occasion of the accused's conviction in his absence under s 12(5) (as substituted) or to an adjournment required by s 12(9) (as substituted): s 13(4) (substituted by the Criminal Justice and Public Order Act 1994 s 45, Sch 5 para 3(2)).

27 le under the Magistrates' Courts Act 1980 s 13 (as amended).



28 Ibid s 13(5) (amended by the Criminal Justice and Public Order Act 1994 Sch 5 para 3(3)).

29 Magistrates' Courts Act 1980 s 55(4). See note 2 *supra*.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### 693 Service and non-appearance

NOTE 1--Reference to the rules is now to rules of court: 1980 Act s 47 (amended by the Courts Act 2003 Sch 8 para 207).

NOTE 4--SI 1981/553 Sch 2 Forms 31, 32 revoked: SI 2003/1236.

TEXT AND NOTE 7--See further 1980 Act s 11(2A) (added by Criminal Justice and Immigration Act 2008 s 54(3)).

TEXT AND NOTE 20--In head (i) words 'the information ... oath and' omitted: 1980 Act s 13(3)(a) (amended by the Criminal Justice Act 2003 s 31(2), Sch 37 Pt 12).

TEXT AND NOTE 23--Now, head (A) the offence to which the warrant relates is punishable, in the case of a person who has attained the age of 18, with imprisonment: 1980 Act s 13(3A)(a) (substituted by the 2003 Act s 31(3)).

TEXT AND NOTE 28--1980 Act s 13(5) repealed: Criminal Justice and Immigration Act 2008 s 54(7), Sch 28 Pt 4.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/ (ii) Summons or Warrant/694. Withdrawal of summons.

### 694. Withdrawal of summons.

By long practice a summons may with the permission of the court be withdrawn without an adjudication<sup>1</sup>. This does not, however, as a rule, have the effect of putting an end to the ground of information or complaint<sup>2</sup>.

<sup>1</sup> Statutory acknowledgement of this practice is to be found in the Prosecution of Offences Act 1985 s 7(4) (as amended), s 16(1); and see *R v Redbridge Justices, ex p Sainty* [1981] RTR 13, DC. See also *R v Phipps, ex p Alton* [1964] 2 QB 420, [1964] 1 All ER 972, DC. Where the Director of Public Prosecutions has the conduct of proceedings for an offence, he has the power to give notice to the justices' chief executive that he does not want the proceedings to continue, and they are discontinued with effect from the giving of that notice: see the Prosecution of Offences Act 1980 s 23 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1159.

<sup>2</sup> The withdrawal of a summons with the court's consent, on a preliminary point or because of some defect in the proceedings, is no bar to subsequent proceedings: *Davis v Morton* [1913] 2 KB 479, DC; *Owens v Minoprio* [1942] 1 KB 193, [1942] 1 All ER 30, DC; *R (McDonnell) v Tyrone Justices* [1912] 2 IR 44. Magistrates considering a second information must determine, in the light of the circumstances surrounding withdrawal of

the first summons, whether the issue of a second would be an abuse of process: *R v Grays Magistrates, ex p Low* [1990] 1 QB 54, [1988] 3 All ER 834, DC. As to informations and complaints see PARA 681 ante.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/ (ii) Summons or Warrant/695. Form and contents of warrant of arrest.

### 695. Form and contents of warrant of arrest.

A warrant of arrest<sup>1</sup> issued by a justice of the peace for the arrest of any person requires the persons to whom it is directed, that is to say, the constables of the police area in which the warrant is issued<sup>2</sup>, or the civilian enforcement officers<sup>3</sup> for the area in which they are employed, or any persons named in that behalf in the warrant, to arrest the person against whom the warrant is issued<sup>4</sup>. The warrant must name or otherwise describe the person for whose arrest it is issued, and must contain a statement of the offence charged in the information or the ground on which the warrant is issued<sup>5</sup>. Except where signature by the clerk of a magistrates' court is permitted<sup>6</sup>, every warrant under the Magistrates' Courts Act 1980 must be signed by the justice who issued it<sup>7</sup>.

No objection is allowed to any warrant for any defect in substance or form<sup>8</sup>.

The execution of warrants is dealt with elsewhere<sup>9</sup>.

1 For forms of warrant of arrest see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Forms 4, 12, 15, 31, 32, 54 (as amended), Forms 103, 138. See PARA 505 note 12 ante. As to warrants of arrest generally see the Magistrates' Courts Rules 1981, SI 1981/552, r 96 (amended by SI 1990/1190; and SI 2001/167).

2 As to the office of constable see generally POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. As to police areas see POLICE vol 36(1) (2007 Reissue) PARAS 136-138.

3 As to civilian enforcement officers see PARA 861 post.

4 Magistrates' Courts Rules 1981, SI 1981/552, r 96(1) (amended by SI 1990/1190; and SI 2001/167). Where a warrant is issued by a justice of the peace for any petty sessions area at a time when the office of the justices' chief executive for that area is closed, the applicant for the warrant must within 72 hours serve upon the justices' chief executive any information on which the warrant was issued: Magistrates' Courts Rules 1981, SI 1981/552, r 95A (added by SI 1993/1183; and amended by SI 2001/610). As to petty sessions areas see PARA 591 et seq ante. As to the justices' chief executive see PARA 624 et seq ante.

5 Magistrates' Courts Rules 1981, SI 1981/552, r 96(2). As to the statement of offence to be contained in a summons see r 100.

6 *Ie* by *ibid* r 109 (see PARA 638 note 3 ante), or by the Magistrates' Courts (Forms) Rules 1981, SI 1981/553 (as amended). No warrant of arrest may, in fact, be signed by the clerk under the Magistrates' Courts Rules 1981, SI 1981/552, r 109: r 109(2). The only forms of warrant of arrest authorised to be signed by the clerk under the Magistrates' Courts (Forms) Rules 1981, SI 1981/553 (as amended) are those in Sch 2 Forms 12, 31, 32.

7 Magistrates' Courts Rules 1981, SI 1981/552, r 95.

8 See the Magistrates' Courts Act 1980 s 123(1); and PARA 689 ante. As to allowing objections for variations between a warrant and the evidence by the prosecution see s 123(2); and PARA 689 ante.

9 As to the execution of warrants see PARA 861 post; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 920.

## **UPDATE**

### **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### **695 Form and contents of warrant of arrest**

NOTES 1, 6--Prescribed forms, cited, revoked: SI 2003/1236.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/ (ii) Summons or Warrant/696. Issue of warrant of arrest.

### **696. Issue of warrant of arrest.**

In addition to a magistrates' court's<sup>1</sup> power to issue a warrant for disobedience to a summons<sup>2</sup>, a justice may, if the matter of the information laid before him is in writing<sup>3</sup> and substantiated upon oath<sup>4</sup>, issue a warrant in the first instance to arrest a person who has or is suspected of having committed an offence and bring him before the court<sup>5</sup>. A warrant may not be issued for the arrest of a person who has attained the age of 18 years<sup>6</sup> unless the offence to which the warrant relates is an indictable offence<sup>7</sup> or is punishable with imprisonment<sup>8</sup>, or the person's address is not sufficiently established for a summons to be served on him<sup>9</sup>. A justice dealing with a complaint is not empowered, in the first instance, to issue a warrant<sup>10</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 See PARA 687 ante.

3 As to the meaning of 'writing' see PARA 507 note 12 ante.

4 See the Magistrates' Courts Act 1980 s 1(3); and PARA 522 ante.

5 See *ibid* s 1(1)(b); and PARA 522 ante. For the prescribed form of warrant see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Forms 4, 15. See PARA 505 note 12 ante. As to a justice's power to issue a warrant operative beyond his jurisdiction see the Magistrates' Courts Act 1980 s 1(2); and PARA 522 et seq ante. In certain cases the accused may be arrested without warrant: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 420 et seq. On the accused appearing before a magistrates' court on arrest without warrant, he is entitled to an information, but he may waive his right: *Blake v Beech* (1876) 1 Ex D 320, DC. See also PARA 681 ante. Where a fresh charge was preferred during the hearing without an information or summons, and no objection was taken until the case had been heard on its merits, a magistrates' court had jurisdiction to convict: *Turner v Postmaster-General* (1864) 34 LJMC 10.

6 As to a person's age see PARA 738 post.

7 For the meaning of 'indictable offence' see PARA 653 ante.

8 Magistrates' Courts Act 1980 s 1(4)(a) (s 1(4) amended by the Criminal Justice Act 1991 s 68, Sch 8 para 6). See further PARA 522 ante.

9 Magistrates' Courts Act 1980 s 1(4)(b) (as amended: see note 8 supra).

10 See *ibid* s 51; and PARA 678 ante. As to the distinction between an information and a complaint see PARA 681 ante.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### 696 Issue of warrant of arrest

NOTE 5--SI 1981/553 Sch 2 Forms 4, 15 revoked: SI 2003/1236.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/ (ii) Summons or Warrant/697. Warrant indorsed for bail.

### 697. Warrant indorsed for bail.

On issuing a warrant for the arrest of any person a justice of the peace may grant him bail by indorsing the warrant for bail with a direction stating<sup>1</sup>:

- 217 (1) in the case of bail in criminal proceedings<sup>2</sup>, that the arrested person is to be released on bail subject to a duty to appear before such magistrates' court<sup>3</sup> at such time as may be specified in the indorsement<sup>4</sup>; and
- 218 (2) in the case of bail otherwise than in criminal proceedings, that the person arrested is to be released on bail on entering into such a recognisance, with or without sureties, conditioned for his appearance before a magistrates' court, as may be so specified<sup>5</sup>.

The indorsement must fix the amounts in which any sureties and, in a case falling within head (2) above, that person arrested is or are to be bound<sup>6</sup>.

Where such a warrant has been indorsed for bail: (a) where the person arrested is to be released on bail on his entering into a recognisance without sureties, it is not necessary to take him to a police station, but if he is so taken, he must be released from custody on his entering into the recognisance<sup>7</sup>; and (b) where he is to be released on his entering into a recognisance with sureties, he must be taken to a police station on his arrest, and the custody officer there must, subject to his approving any surety tendered in compliance with the indorsement, release him from custody as directed in the indorsement<sup>8</sup>.

1 Magistrates' Courts Act 1980 s 117(1).

2 For the meaning of 'bail in criminal proceedings' see PARA 718 note 2 post; definition applied by the Magistrates' Courts Act 1980 s 150(1).

- 3 For the meaning of 'magistrates' court' see PARA 583 ante.
- 4 Magistrates' Courts Act 1980 s 117(1), (2)(a).
- 5 Ibid s 117(2)(b). As to recognisances see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq.
- 6 Ibid s 117(2).
- 7 Ibid s 117(3)(a) (s 117(3) substituted by the Police and Criminal Evidence Act 1984 s 47). As to release on bail by the police see the Magistrates' Courts Act 1980 s 43 (as substituted and amended); the Police and Criminal Evidence Act 1984 Pt IV (ss 34-52) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 935, vol 11(3) (2006 Reissue) PARA 1177.
- 8 Magistrates' Courts Act 1980 s 117(3)(b) (as substituted: see note 7 supra).

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/ (ii) Summons or Warrant/698. Withdrawal of warrant.

### 698. Withdrawal of warrant.

Where a warrant of arrest has been issued by a justice of the peace, it remains in force until it is executed or withdrawn or it ceases to have effect in accordance with the rules made under the Magistrates' Courts Act 1980<sup>1</sup>. A magistrate is liable to be compelled to withdraw a warrant where it is clear that the person against whom a warrant is issued has committed no offence<sup>2</sup>.

1 Magistrates' Courts Act 1980 s 125(1) (amended by the Access to Justice Act 1999 s 97(4)). The text refers to the rules made under the Magistrates' Courts Act 1980 s 144 (as amended) (see PARA 588 ante): s 150(1). A duplicate warrant may be issued where, for example, the justice is satisfied the original has been destroyed or mislaid: *R v Leigh Justices, ex p Kara* (1980) 72 Cr App Rep 327, [1981] Crim LR 628, DC.

2 *R v Crossman, ex p Chetwynd* (1908) 98 LT 760, DC.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/ (ii) Summons or Warrant/699. Proceedings without notice.

### 699. Proceedings without notice.

In some cases, for instance where immediate action is required in the public interest<sup>1</sup>, a magistrates' court or a justice is authorised to proceed without issuing either a summons or warrant<sup>2</sup>, but proceedings against a person arising therefrom may not generally be initiated without the issue of a summons or warrant<sup>3</sup>.

1 Eg so as to make an order for removal to suitable premises of a person in need of care and attention: see the National Assistance Act 1948 s 47 (as amended); and SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARAS 1074-1076.

2 See *White v Redfern* (1879) 5 QBD 15 at 18, DC, per Field J. But where there is no paramount necessity for immediately remedying the evil, a summons to the party affected must be issued: *Gill v Bright* (1871) 41 LJMC 22; *R v Cheshire Lines Committee* (1873) LR 8 QB 344; *Ex p Francis* [1903] 1 KB 275, DC.

3 *Waye v Thompson* (1885) 15 QBD 342, DC. See PARA 687 note 7 ante. See also, in family proceedings, the power of the court in proceedings under the Family Law Act 1996 Pt IV (ss 30-63) (as amended) to make an occupation order or non molestation order where it considers it just and convenient to do so even though the respondent has not been given such notice of the proceedings as would otherwise be required by rules of court: see the Family Law Act 1996 s 45(1); and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 290. See also the Family Proceedings Courts (Children Act 1989) Rules 1991, SI 1991/1395 (as amended), where with the leave of the justices' clerk the applications for the following may be heard ex parte: (1) a section 8 order; (2) an emergency protection order; (3) a warrant under the Children Act 1989 s 48(9); (4) a recovery order; (5) a warrant under the Children Act 1989 s 102(1): see the Family Proceedings Courts (Children Act 1989) Rules 1991, SI 1991/1395, r 4(4) (as amended); and CHILDREN AND YOUNG PERSONS. As to family proceedings see PARA 739 et seq post.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(iii) Transfer of Trials of Summary Offences/700. Transfer of trials of summary offences.

### (iii) Transfer of Trials of Summary Offences

#### 700. Transfer of trials of summary offences.

As from a day to be appointed, where a person is required to appear, or to be brought, before a magistrates' court<sup>1</sup> on an information<sup>2</sup> charging him with a summary offence<sup>3</sup>, he or the prosecutor may apply to the court for the offence to be tried by a magistrates' court which is named in the application but which would not otherwise<sup>4</sup> have jurisdiction to try the offence<sup>5</sup>. Where such an application is granted, the court named in it is to have jurisdiction to try the offence<sup>6</sup>.

The Lord Chancellor<sup>7</sup> may make regulations<sup>8</sup> specifying matters which a court must consider in deciding whether to grant or refuse such an application, and circumstances in which a court must grant or refuse such an application<sup>9</sup>.

- 1 For the meaning of 'magistrates' court' see PARA 583 ante.
- 2 As to informations see PARA 681 et seq ante.
- 3 For the meaning of 'summary offence' see PARA 653 ante.
- 4 Ie apart from the Magistrates' Courts Act 1980 s 3B(2) (prospectively added): see the text to note 6 infra.
- 5 Ibid s 3B(1) (s 3B prospectively added by the Access to Justice Act 1999 s 80(1)). At the date at which this volume states the law no such day had been appointed.
- 6 Magistrates' Courts Act 1980 s 3B(2) (prospectively added: see note 5 supra).
- 7 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.
- 8 At the date at which this volume states the law no such regulations had been made.
- 9 Magistrates' Courts Act 1980 s 3B(3) (as added: see note 5 supra). This power to make regulations is to be exercisable by statutory instrument which is to be subject to annulment by resolution of either House of Parliament: s 3B(4) (as so added).

## **UPDATE**

### **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### **700 Transfer of [criminal proceedings]**

TEXT AND NOTES--Magistrates' Courts Act 1980 s 3B repealed: Courts Act 2003 s 46(2), Sch 10. A magistrates' court now has the power to transfer criminal proceedings to another magistrates' courts at any stage in the proceedings, in accordance with any directions made by the Lord Chancellor under s 30(3) (see PARA 583): 1980 Act s 27A (added by the 2003 Act s 46(1)).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(iv) Proceedings in Absence of Party/701. Non-appearance of accused or defendant.

## **(iv) Proceedings in Absence of Party**

### **701. Non-appearance of accused or defendant.**

Where at the time and place appointed for the trial or adjourned trial of an information<sup>1</sup> for an offence or the hearing or adjourned hearing of a complaint<sup>2</sup>, the prosecutor or complainant appears but the accused or defendant does not, the court may proceed in his absence<sup>3</sup>. Where a summons has been issued, however, the court must not so proceed unless it is proved that the summons was served on the accused or defendant within a reasonable time before the trial or adjourned trial or hearing or that he has appeared on a previous occasion to answer to the information or complaint<sup>4</sup>. A defendant should be allowed to attend a view of the scene where the offence allegedly took place where the view is part of the trial<sup>5</sup>.

1 As to informations see PARA 681 ante.

2 As to complaints see PARA 681 ante.

3 Magistrates' Courts Act 1980 ss 11(1), 55(1). As to appearance by representative see s 122 (as amended); and PARA 693 note 3 ante. For the alternative power to issue a warrant see PARA 693 ante; and for the power to adjourn see PARA 707 post. In the case of certain summary offences a written plea of guilty may be accepted in the absence of the accused: see s 12 (as substituted and amended); and PARA 705 post. In the application of the Magistrates' Courts Act 1980 to civil contempt proceedings under s 63(3) (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq), where the proceedings are taken of the court's own motion, s 55 applies as if the complaint had been made against the person against whom the proceedings are taken; and in s 55(1), for the words 'the complainant appears but the defendant does not', there are substituted the words 'the defendant does not appear': Contempt of Court Act 1981 s 17(2), Sch 3 para 1(1), (2).

Where it has been proved, in the defendant's absence, that he has committed a breach of the peace, the trial must be adjourned in order to secure his attendance so that he can be present either to enter into a recognisance or refuse to do so with the consequence of going to prison: *DPP v Speede, R v Liverpool Justices, ex p Collins, R v Liverpool Justices, ex p Santos* [1998] 2 Cr App Rep 108, DC. For principles which apply in relation to the trial of a defendant in his absence see *R v Hayward* [2001] EWCA Crim 168, [2001] QB 862, [2001] 3 WLR 125, DC; *R (on the application of Whitehead) v Horseferry Road Magistrates' Court* [2001] EWHC Admin 492, DC.

4 See the Magistrates' Courts Act 1980 ss 11(2), 55(3); and PARA 693 ante. See note 3 supra. For methods of proving service of a summons or other document see PARA 691 ante. As to complaints see PARA 681 ante.

5 *R v Ely Justices, ex p Burgess* [1992] Crim LR 888, 157 JP 484, DC.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### 701 Non-appearance of accused or defendant

TEXT AND NOTE 3--1980 Act s 11(1) amended: Criminal Justice and Immigration Act 2008 s 54(2).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(iv) Proceedings in Absence of Party/702. Ignorance of proceedings.

### 702. Ignorance of proceedings.

Where a summons has been issued<sup>1</sup> and a magistrates' court<sup>2</sup> has begun to try the information<sup>3</sup> to which the summons relates, then, if: (1) at any time during or after the trial the defendant makes a statutory declaration<sup>4</sup> that he did not know of the summons or the proceedings until a date specified in the declaration, being a date after the court has begun to try the information<sup>5</sup>; and (2) within 21 days of that date the declaration is served<sup>6</sup> on the justices' chief executive for the court<sup>7</sup>, the summons and all subsequent proceedings are void<sup>8</sup>. The information must not then be tried again by any of the same justices<sup>9</sup>.



- 1 le under the Magistrates' Courts Act 1980 s 1 (as amended): see PARA 522 ante.
- 2 For the meaning of 'magistrates' court' see PARA 583 ante.
- 3 As to informations see PARA 681 ante.
- 4 le a declaration under the Statutory Declaration Act 1835: Interpretation Act 1978 ss 5, 22(1), Sch 1, Sch 2 para 4(1)(b) (amended by the Family Law Reform Act 1987 ss 33(1), (4), Sch 2 para 74, Sch 3 para 1, Sch 4).
- 5 Magistrates' Courts Act 1980 s 14(1)(a).
- 6 The declaration is deemed to be duly served on the justices' chief executive if it is delivered to him, or left at his office, or is sent in a registered letter or by the recorded delivery service addressed to him at his office: *ibid* s 14(2) (amended by the Access to Justice Act 1999 s 90(1), Sch 13 paras 95, 98(1), (3)). The justices' chief executive must note the receipt of the declaration in the court register against the entry in respect of the trial of the information to which the declaration relates (Magistrates' Courts Rules 1981, SI 1981/552, r 20(a) (amended by SI 2001/610)), and inform the prosecutor and, if the prosecutor is not a constable, the chief officer of police of the receipt of the declaration (Magistrates' Courts Rules 1981, SI 1981/552, r 20(b) (amended by SI 2001/610)). As to the justices' chief executive see PARA 624 et seq ante.
- 7 Magistrates' Courts Act 1980 s 14(1)(b). If on the defendant's application it appears to a magistrates' court (which may be composed of a single justice) that it was not reasonable to expect the defendant to serve the declaration within the period allowed it may accept late service: see s 14(3). See also *R v Brighton Justices, ex p Robinson* [1973] 1 WLR 69, [1973] Crim LR 53, DC, where it was held that certiorari (now termed a quashing order) will not normally be granted to a defendant who fails to take advantage of this provision. As to quashing orders see JUDICIAL REVIEW vol 61 (2010) PARA 693 et seq. The power of a single justice to accept service may be exercised by a justices' clerk: see PARA 638 ante.
- 8 Magistrates' Courts Act 1980 s 14(1). This is without prejudice to the validity of the information: s 14(1).
- 9 See *ibid* s 14(4).

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### 702 Ignorance of proceedings

TEXT AND NOTES 6, 7--References to justices chief executive are now to designated officer: 1980 Act s 14(1), (2) (both amended by the Courts Act 2003 Sch 8 para 205).

NOTE 6--SI 1981/552 r 20 now CrimPR 37.11 (added by SI 2008/2076).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(iv) Proceedings in Absence of Party/703. Non-appearance of prosecutor or complainant.

### 703. Non-appearance of prosecutor or complainant.

Where at the time and place appointed for the trial or hearing, or adjourned trial or hearing, of an information or complaint<sup>1</sup> the accused or defendant appears but the prosecutor or complainant does not appear, the court may dismiss the information or complaint, or, if evidence has been received on a previous occasion, may proceed in the absence of the prosecutor or complainant<sup>2</sup>.

1 As to informations and complaints see PARA 681 ante.

2 See the Magistrates' Courts Act 1980 ss 15(1), 56. As to appearance by legal representative see s 122 (as amended); and PARA 693 note 3 ante. As to the power to adjourn see s 10 (as amended), s 54; and PARA 707 post. As to remands on adjournment see s 10(4) (as amended); and PARA 711 post. Whether a refusal by justices to grant a short adjournment for the attendance of prosecution witnesses amounts to a breach of natural justice depends on the facts of each case: *R v Swansea Justices and Davies, ex p DPP*; *R v Swansea Justices and Phillips, ex p DPP* (1990) 154 JP 709. The exercise by the justices of their powers under the Magistrates' Courts Act 1980 s 15 should not contravene the principles of natural justice: *R v Dudley Magistrates' Court, ex p DPP* (1993) 157 JP 177, DC. Where the prosecutor's witnesses were not present and magistrates refused an adjournment the magistrates' dismissal was held to bar further proceedings for the offence because there had been a trial on the merits in the sense that the defendant was in jeopardy of conviction: *R v Swansea Justices, ex p Purvis* (1981) 145 JP 252, DC. Proceedings do not necessarily lapse upon the death of the informant: *R v Truelove* (1880) 5 QBD 336, DC. It is now the duty of the justices' chief executive to send to the Director of Public Prosecutions a copy of the information and of any depositions and other documents relating to any case in which: (1) a prosecution for an offence before the magistrates' court to which he is the justices' chief executive is withdrawn or is not proceeded with within a reasonable time; (2) the Director of Public Prosecutions does not have the conduct of the proceedings; and (3) there is some ground for suspecting that there is no satisfactory reason for the withdrawal or failure to proceed: Prosecution of Offences Act 1985 s 7(4) (amended by the Access to Justice Act 1999 s 90(1), Sch 13 paras 129, 130). As to the use of the expression 'examining justices' see PARA 524 note 9 ante. For the meaning of 'magistrates' court' see PARA 583 ante. As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

It can rarely be reasonable for magistrates to exercise the power under the Magistrates' Courts Act 1980 s 15(1) to dismiss an information for want of prosecution where they know that a prosecutor is on his way to court and the case is otherwise ready to be presented: *R v Hendon Justices, ex p DPP* [1994] QB 167, [1993] 1 All ER 411, DC; *R v Sutton Justices, ex p DPP* [1992] 2 All ER 129, DC.

In the prosecutor's absence, where the defendant is in no danger of being convicted because magistrates have no power to do so, magistrates should exercise their discretion by examining the prejudice that might be caused to the defendant if new informations are preferred when viewed against the public interest in the issues being tried: *Holmes v Campbell* (1998) 162 JP 655.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### 703 Non-appearance of prosecutor or complainant

NOTE 2--The Magistrates' Courts Act 1980 s 15(1) should be read in conjunction with the powers of the magistrates under ss 9, 10: *DPP v Shuttleworth* [2002] EWHC 621 (Admin), (2002) 166 JP 417.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(iv) Proceedings in Absence of Party/704. Non-appearance of both parties.

### 704. Non-appearance of both parties.

Where at the time and place appointed for the trial or hearing, or adjourned trial or hearing, of an information or complaint<sup>1</sup> neither party appears, the court may dismiss the information or

complaint, or, in the case of an information, if evidence has been received on a previous occasion, may proceed in the absence of the parties<sup>2</sup>.

1 As to informations and complaints see PARA 681 ante.

2 See the Magistrates' Courts Act 1980 ss 16, 57. The informant's absence will not invalidate the court's decision if the defendant desires the hearing to proceed: *May v Beeley* [1910] 2 KB 722, DC. As to the power to adjourn see the Magistrates' Courts Act 1980 s 10 (as amended), s 54; and PARA 707 post. Whether a refusal by justices to grant a short adjournment to enable both parties to attend amounts to a breach of natural justice depends on the facts of each case: *R v Swansea Justices and Davies, ex p DPP*; *R v Swansea Justices and Phillips, ex p DPP* (1990) 154 JP 709.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(iv) Proceedings in Absence of Party/705. Written plea of guilty in absence of an accused.

### 705. Written plea of guilty in absence of an accused.

The general rule that in the absence of the accused a criminal charge against him must be strictly proved is modified by statute to permit a plea of guilty to be taken in certain circumstances in the absence of the accused<sup>1</sup>. This may be done<sup>2</sup> where a summons has been issued requiring a person to appear before a magistrates' court<sup>3</sup> other than a youth court, or a person who has attained the age of 16<sup>4</sup> at the time of issue to appear before a youth court<sup>5</sup> to answer to an information for a summary offence<sup>6</sup>, not being: (1) an offence for which the accused is liable to imprisonment for a term exceeding three months<sup>7</sup>; or (2) an offence specified by order<sup>8</sup> of the Secretary of State<sup>9</sup>, and the justices' chief executive<sup>10</sup> is notified by or on behalf of the prosecutor that certain documents<sup>11</sup> have been served<sup>12</sup> upon the accused with the summons<sup>13</sup>.

1 See the Magistrates' Courts Act 1980 s 12 (substituted by the Criminal Justice and Public Order Act 1994 s 45, Sch 5 para 1; and amended by the Magistrates' Courts (Procedure) Act 1998 s 1; and the Access to Justice Act 1999 s 90(1), Sch 13 paras 95, 97).

2 See the Magistrates' Courts Act 1980 s 12(4) (as substituted and amended); and PARA 706 post.

3 For the meaning of 'magistrates' court' see PARA 583 ante.

4 As to a person's age see PARA 738 post.

5 See Magistrates' Courts Act 1980 s 12(2) (as substituted (see note 1 supra); and amended by virtue of the Criminal Justice Act 1991 s 70). As to notification or intimation for the purposes of the Magistrates' Courts Act 1980 s 12(2) (as substituted and amended) and s 12(3) (as substituted) (see note 11 infra) given on behalf of a corporation see s 46, Sch 3 para 4; and PARA 666 ante. As to proceedings in youth courts see PARA 746 et seq post.

6 For the meaning of 'summary offence' see PARA 653 ante.

7 Magistrates' Courts Act 1980 s 12(1)(a)(i) (as substituted: see note 1 supra). As to informations see PARA 681 ante.

8 Such an order must be made by statutory instrument, and must not be made unless a draft has been approved by resolution of each House of Parliament: see *ibid* s 12(12) (as substituted: see note 1 supra). At the date at which this volume states the law no such order had been made. As to cases in which the Secretary of State advises that the procedure should not be used see Home Office Circular 151/57. See also Home Office Circular 56/81, relating to avoidance of unnecessary attendance in court of police officers as prosecution witnesses in cases of minor traffic offences.

9 Magistrates' Courts Act 1980 s 12(1)(a)(ii) (as substituted: see note 1 supra).

10 As to the justices' chief executive see PARA 624 et seq ante.

11 These documents are:

61 (1) a notice containing a prescribed statement of the effect of the Magistrates' Courts Act 1980 s 12 (as substituted and amended) (see s 12(3)(a) (as substituted: see note 1 supra)); Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Form 27 (amended by SI 1992/2072; SI 1995/1909; and SI 2001/615);

62 (2) either a concise statement in a prescribed form of such facts relating to the charge as the prosecution will place before the court if the accused pleads guilty without appearing, or a statement complying with the Criminal Justice Act 1967 s 9(2)(a), (b), (3) (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1535) (see the Magistrates' Courts Act 1980 s 12(3)(b) (as substituted (see note 1 supra); and amended by the Access to Justice Act 1999 Sch 13 paras 95, 97); Magistrates' Courts (Forms) Rules 1981, SI 1981/553, Sch 2 Form 28 (amended by SI 1995/1905; and SI 2001/615);

63 (3) if any information relating to the accused will or may be placed before the court by or on behalf of the prosecutor, a notice containing or describing that information (see the Magistrates' Courts Act 1980 s 12(3)(c) (as substituted: see note 1 supra)).

64 See PARA 505 note 12 ante.

12 The documents may be served in Scotland under the Summary Jurisdiction (Process) Act 1881: Magistrates' Courts Act 1980 s 12(13) (as substituted: see note 1 supra).

13 *Ibid* s 12(1)(b) (as substituted: see note 1 supra). The prosecutor must send a copy of the statement of facts to the justices' chief executive: see the Magistrates' Courts Rules 1981, SI 1981/552, r 73 (amended by SI 1983/523; and SI 2001/610).

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### 705-706 Written plea of guilty in absence of an accused, Acceptance or rejection of written plea of guilty

As to the procedure for making an application to change a plea of guilty in summary proceedings see CrimPR 37.6 (added by SI 2007/2317).

### 705 Written plea of guilty in absence of an accused

TEXT AND NOTE 10--Reference to justices' chief executive is now to designated officer: 1980 Act s 12(1)(b) (amended by Courts Act 2003 Sch 8 para 203(a)).

NOTE 11--Heads (1), (2). SI 1981/553 Sch 2 Forms 27, 28 revoked: SI 2003/1236.

NOTE 13--See now CrimPR 37.9 (added by SI 2008/2076).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(iv) Proceedings in Absence of Party/706. Acceptance or rejection of written plea of guilty.

### **706. Acceptance or rejection of written plea of guilty.**

Where the justices' chief executive<sup>1</sup> of a magistrates' court<sup>2</sup> is notified by or on behalf of the prosecutor that the necessary documents<sup>3</sup> have been sent to an accused person to enable him if he so desires to plead guilty in his absence<sup>4</sup>, and the justices' chief executive receives a written notification<sup>5</sup> purporting to be given by the accused<sup>6</sup> or by a solicitor acting on his behalf that the accused desires to plead guilty without appearing in court, the justices' chief executive must inform the prosecutor accordingly<sup>7</sup>. If at the time and place appointed for the trial or adjourned trial of the information the accused does not appear and it is proved to the court's satisfaction<sup>8</sup> that the necessary documents<sup>9</sup> have been served upon the accused with the summons, the court may<sup>10</sup> proceed to hear and dispose of the case in his absence, whether or not the prosecutor is also absent, in like manner as if both parties had appeared and the accused had pleaded guilty<sup>11</sup>. If the court proceeds<sup>12</sup> to hear and dispose of the case in the absence of the accused, it must not permit any statement with respect to any facts relating to the offence charged other than the prescribed statement of facts<sup>13</sup>, or any other information relating to the accused<sup>14</sup>, to be made or placed before the court by or on behalf of the prosecutor except on a resumption of the trial after an adjournment<sup>15</sup>. Before accepting the plea of guilty and convicting the accused in his absence, the notification and statement of facts must be read out before the court by the clerk of the court, and must include any information contained in a notice served on the accused with the summons, and any information described in such a notice and produced by or on behalf of the prosecutor<sup>16</sup>.

Where the clerk of the court has received such a notification<sup>17</sup> but the accused nevertheless appears before the court at the time and place appointed for the trial or adjourned trial, the court may, if the accused consents, proceed<sup>18</sup> as if he were absent<sup>19</sup>. Before accepting the plea of guilty and convicting the accused, the court must afford him an opportunity to make an oral submission with a view to mitigation of sentence<sup>20</sup>.

Where the clerk of the court has not received such a notification and the accused appears before the court at that time and place and informs the court that he desires to plead guilty, the court may, if he consents, proceed as if he were absent and the clerk had received such a notification<sup>21</sup>. Before accepting the plea of guilty and convicting the accused, the court must afford him an opportunity to make an oral submission with a view to mitigation of sentence<sup>22</sup>.

If the court decides not to proceed in this manner<sup>23</sup>, it must adjourn or further adjourn the trial for the purpose of dealing with the information as if the accused had not notified<sup>24</sup> his desire to plead guilty without appearing<sup>25</sup>.

A magistrates' court must not in a person's absence sentence him to imprisonment or detention in a young offender institution<sup>26</sup> or make a detention and training order<sup>27</sup> or an order<sup>28</sup> that a suspended sentence is to take effect<sup>29</sup>, or, except on resumption of the hearing after an adjournment<sup>30</sup>, impose any disqualification on him<sup>31</sup>.

1 As to the justices' chief executive see PARA 624 et seq ante.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 As to these documents see PARA 705 note 11 ante.

4 See the Magistrates' Courts Act 1980 s 12(1)(b) (as substituted and amended); and PARA 705 ante.

5 In relation to road traffic offences, it is the duty of a person giving such a notification in respect of any offence involving obligatory or discretionary disqualification to include in the notification a statement of the date of birth and the sex of the accused: see the Road Traffic Offenders Act 1988 s 8 (as amended); and ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 1033. If this information is not provided and the court, on convicting the accused, does not know his date of birth or sex, it must order him to furnish that information in writing to the court: see s 25(1), (2) (as amended); and ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 1045. A person who knowingly fails to comply with such an order is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 25(3), Sch 2 Pt I. Where a person has stated his date of birth to a court, the Secretary of State may serve on him a notice in writing requiring him to furnish the Secretary of State: (1) with such evidence in that person's possession or obtainable by him as the Secretary of State may specify for the purpose of verifying that date (s 25(5)(a)); and (2) if his name differs from his name at the time of his birth, with a statement in writing specifying his name at that time (s 25(5)(b)). A person who knowingly fails to supply such information is guilty of an offence (s 25(5)) and is liable on summary conviction to a fine not exceeding level 3 on the standard scale (Sch 2 Pt I). As to the Secretary of State see PARA 530 note 8 ante. As to the standard scale see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142.

6 A notification may be given on behalf of a corporation by a director or the secretary: see the Magistrates' Courts Act 1980 s 46, Sch 3 para 4(1).

7 See *ibid* s 12(4) (s 12 substituted by the Criminal Justice and Public Order Act 1994 s 45, Sch 5 para 1; and the Magistrates' Courts Act 1980 s 12(4), (6) (as substituted) amended by the Access to Justice Act 1999 s 90(1), Sch 13 paras 95, 97). It is open to the accused to tender a plea of guilty up to the very last moment, not merely by the return date of the summons: *R v Norham and Islandshire Justices, ex p Sunter Bros Ltd* [1961] 1 All ER 455, [1961] 1 WLR 364, DC. If at any time before the hearing the justices' chief executive receives an indication in writing purporting to be given by or on behalf of the accused that he wishes to withdraw the notification, the justices' chief executive must inform the prosecutor of the withdrawal, and the court must deal with the information as if the notification had not been given: Magistrates' Courts Act 1980 s 12(6) (as so substituted and amended). An indication may be given on behalf of a corporation by a director or the secretary: see Sch 3 para 4(1). As to informations see PARA 681 ante.

8 Proof must be on oath or in the manner prescribed by the Magistrates' Courts Rules 1981, SI 1981/552 (see eg rr 67, 99 (amended by SI 1993/1183)): Magistrates' Courts Act 1980 s 12(5) (as substituted: see note 7 supra), s 150(1). As to the exclusion of s 13 (as amended) (issue of warrant on non-appearance of accused) (see PARA 693 ante) in relation to proceedings under s 12(5), (9) (as substituted) see PARA 693 note 26 ante.

9 *Ie* the documents mentioned in *ibid* s 12(3) (as substituted and amended): see PARA 705 note 11 ante.

10 *Ie* subject to *ibid* s 11(3), (4) (see the text and notes 26-31 *infra*), and s 12(6)-(8) (as substituted and amended) (see the text and notes 7 supra, 12-16 *infra*).

11 *Ibid* s 12(5) (as substituted: see note 7 supra). Where a person is convicted in his absence under s 12(5) (as substituted) of an offence contrary to the Vehicle Excise and Registration Act 1994 s 29 (as amended) (using or keeping a vehicle without a licence) (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 777) or s 35A (as added and amended) (dishonoured cheques) (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 784), and it is proved that there was served on him with the summons a notice stating that, in the event of his conviction, it would be alleged that an order requiring him to pay an amount specified in the notice falls to be made under s 30 (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 778) or s 36 (as amended) (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 784), then, unless in the notification given by or on behalf of the accused it is stated that the specified amount is inappropriate, the court must proceed as if that amount had been calculated as required by s 30 or s 36 (as amended): see s 55 (as amended); and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 799.

Similarly, where a person has been convicted under this procedure of an offence under the Social Security Administration Act 1992 s 114(1) (failure to pay contributions), and it is proved that the accused was served with notice specifying every contribution or premium in respect of which the prosecution intends to give evidence, and the justices' chief executive has received a written statement purporting to be made by the accused or a solicitor acting on his behalf stating that, if convicted, he desires to admit failing to pay the specified contribution or premium, s 120 (as amended) (proof of previous offences) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 406), has effect as if that evidence had been given and the admitted failure proved, and the court must proceed accordingly: see s 121(1) (as amended); and SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 406.

12 *Ie* under the Magistrates' Courts Act 1980 s 12(5) (as substituted): see the text and notes 8-11 supra).

13 *Ibid* s 12(8)(a) (as substituted: see note 7 supra). As to the prescribed statement of facts see PARA 705 note 11 ante.

14 Ibid s 12(8)(b) (as substituted: see note 7 supra).

15 Ibid s 12(8) (as substituted: see note 7 supra). The text refers to an adjournment under s 10(3): see PARA 711 post.

16 See *ibid* s 12(7) (as substituted (see note 7 supra); and amended by the Magistrates' Courts (Procedure) Act 1998 s 1(2)). See further the Magistrates' Courts Act 1980 s 12(7A), (7B) (added by the Magistrates' Courts (Procedure) Act 1998 s 1(3)), in relation to the information to be read out before the court. One set of forms may properly be used for two or more offences, but a conviction will be quashed unless it is clear that the accused intended to plead guilty to all the offences: *R v Burnham Justices, ex p Ansorge* [1959] 3 All ER 505, [1959] 1 WLR 1041, DC. A conviction will also be quashed if any submission in mitigation is not read out: *R v Oldham Justices, ex p Morrissey* [1958] 3 All ER 559n, [1959] 1 WLR 58, DC. See also *R v Epping and Ongar Justices, ex p C Shippam Ltd* (1986) 150 JP 425, DC (proceedings declared a nullity but did not prevent a further hearing taking place if so required). The prosecution may also notify a claim for costs on the statement of facts and the clerk to the court must bring the claim for costs to the attention of the justices so that they may adjudicate on the application: *R v Coventry Magistrates' Court, ex p DPP* [1990] 3 All ER 277, 154 JP 765, DC.

17 Ie a notification as is mentioned in the Magistrates' Courts Act 1980 s 12(4) (as substituted and amended): see the text and notes 1-7 supra.

18 Ie under *ibid* s 12(5) (as substituted): see the text and notes 8-11 supra.

19 Ibid s 12A(1) (s 12A added by the Criminal Justice and Public Order Act 1994 s 45, Sch 5 para 2).

20 See the Magistrates' Courts Act 1980 s 12A(3), (4) (as added: see note 19 supra).

21 Ibid s 12A(2) (as added: see note 19 supra).

22 See *ibid* s 12A(3), (5) (as added: see note 19 supra).

23 Ie under *ibid* s 12(5) (as substituted): see the text and notes 8-11 supra.

24 Ie under *ibid* s 12(4) (as substituted and amended): see the text and notes 1-7 supra.

25 Ibid s 12(9) (as substituted: see note 7 supra). See note 8 supra. In relation to an adjournment on the occasion of the accused's conviction in his absence under s 12(5) (as substituted) or to an adjournment required by s 12(9) (as substituted), the notice required by s 10(2) (see PARA 707 post) must include notice of the reason for the adjournment: s 12(10) (as so substituted). No notice is required by s 10(2) in relation to an adjournment which is for not more than four weeks, and the purpose of which is to enable the court to proceed under s 12(5) (as substituted) at a later time: s 12(11) (as so substituted).

26 As to young offender institutions see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 85.

27 As to detention and training orders see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1398.

28 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 119.

29 Magistrates' Courts Act 1980 s 11(3) (amended by virtue of the Criminal Justice Act 1988 s 123, Sch 8 para 1; the Criminal Justice and Public Order Act 1994 s 168(2), Sch 10 para 39; the Crime and Disorder Act 1998 s 119, Sch 8 para 39; and the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 61).

30 Ie under the Magistrates' Courts Act 1980 s 10(3): see PARA 711 post.

31 Ibid s 11(4). In this case the notice of resumption must include notice of the reason for the adjournment: see s 11(4). If the notice is to enable a particular penalty to be imposed and the notice does not say so, that penalty may not be imposed at the resumed hearing: *R v Mason* [1965] 2 All ER 308.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

## **705-706 Written plea of guilty in absence of an accused, Acceptance or rejection of written plea of guilty**

As to the procedure for making an application to change a plea of guilty in summary proceedings see CrimPR 37.6 (added by SI 2007/2317).

## **706 Acceptance or rejection of written plea of guilty**

TEXT AND NOTES 1-7--References to justices' chief executive are now to designated officer: Magistrates' Courts Act 1980 ss 12(4), (6) (both amended by Courts Act 2003 Sch 8 para 203).

NOTE 5--Notice in writing of an order under the Road Traffic Offenders Act 1988 s 25 must be served on the accused: see CrimPR 37.10 (added by SI 2008/2076).

TEXT AND NOTES 17-21--References to clerk are now to designated officer: 1980 Act s 12A(1), (2) (both amended by Courts Act 2003 Sch 8 para 204).

NOTE 28--Reference to Powers of Criminal Courts (Sentencing) Act 2000 s 119 (repealed) is now to Criminal Justice Act 2003 Sch 12 para 8(2)(a) or (b): 1980 Act s 11(3) (amended by Criminal Justice Act 2003 Sch 32 para 26).

TEXT AND NOTES 29, 31--1980 Act s 11(3), (4) amended, s 11(3A), (5) added: Criminal Justice and Immigration Act 2008 s 54(4)-(6).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(v) Adjournment and Remand/A. ADJOURNMENT/707. Adjournment of trial or hearing.

## **(v) Adjournment and Remand**

### **A. ADJOURNMENT**

#### **707. Adjournment of trial or hearing.**

A magistrates' court<sup>1</sup> may, at any time, whether before or after beginning to try an information or hear a complaint<sup>2</sup>, adjourn<sup>3</sup> the trial or hearing, and may do so when composed of a single justice<sup>4</sup>. The court when adjourning may either fix the time and place at which the trial or hearing is to be resumed or, unless the defendant is remanded, may leave the time and place to be determined later by the court<sup>5</sup>. Should the postponement be on some extraneous or extra-judicial ground<sup>6</sup> or for such an unreasonable period as would, in effect, amount to the court declining jurisdiction, the High Court will interfere so as to have the matter determined<sup>7</sup>. After an adjournment the trial or hearing may not be resumed unless the court is satisfied that the parties have had adequate notice of the time and place of the adjourned trial or hearing<sup>8</sup>.

<sup>1</sup> For the meaning of 'magistrates' court' see PARA 583 ante.

<sup>2</sup> In the application of the Magistrates' Courts Act 1980 to civil contempt proceedings under s 63(3) (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq), where the proceedings are taken of the court's own motion, s 54 (as amended) applies as if the complaint had been made against the person against whom the proceedings are taken: Contempt of Court Act 1981 s 17(2), Sch 3 para 1(1). As to informations and complaints see PARA 681 ante.



3 The fact that inadmissible evidence may have prejudiced the mind of the court is good reason for adjourning, not for dismissing, a case: *Elkington v Kesley* [1948] 2 KB 256, [1948] 1 All ER 786, DC; *R v Ripon Liberty Justices, ex p Bugg* (1990) 155 JP 213, DC. In such a case the trial or hearing would be started anew before a fresh bench: *Elkington v Kesley* supra at 263. See also *R v Birmingham Magistrates' Court, ex p Shields* (1994) 158 JP 845, DC, where the chairman of the justices was due to retire before the trial could resume, the hearing of the case was adjourned and the case was ordered to be heard before a differently constituted bench; and *DPP v Khan* (31 October 2000) Lexis, Enggen Library, Cases File, DC, where the case was adjourned owing to lack of time after the prosecution case was completed, it was held that in exceptional circumstances a differently constituted bench may direct that the case be reheard afresh.

In considering an application to adjourn, the justices should take care to observe the interests of fairness on both sides. As to the factors to be taken into account in determining whether an adjournment should be granted see *R v Kingston-upon-Thames Justices, ex p Martin* [1994] Imm AR 172, DC. Consideration of an application for an adjournment should take into account the possible effects of a refusal on the ability of a party to proceed: *R v Aberdare Justices, ex p DPP* (1990) 155 JP 324, DC. See also *DPP v Gokceli* (1988) 153 JP 109, DC (magistrates should have adjourned case where absent defendant had denied offence in contradiction of positive evidence adduced by prosecution); *R v Bristol Magistrates' Court, ex p Rowles* [1994] RTR 40, DC (breach of natural justice to refuse adjournment where two witnesses essential to defence failed to attend); and *R (on the application of Rashid) v Horseferry Road Magistrates' Court* (7 November 2000) Lexis, Enggen Library, Cases File, DC (adjournment should have been allowed where legal aid not granted and defendant's poor grasp of English made it difficult to take instructions on the prosecution statements and interview summary served on the day of trial). An adjournment was rightly refused where two previous trial dates had been aborted owing to inefficiency of prosecution: *R (on the application of DPP) v Bridgend Justices* (28 November 2000) Lexis, Enggen Library, Cases File, DC.

4 Magistrates' Courts Act 1980 ss 10(1), 54(1). Where in the absence of the accused a magistrates' court adjourns the trial of an information, the justices' chief executive for the court must give written notice to the accused of the time and place at which the trial is to be resumed: Magistrates' Courts Rules 1981, SI 1981/552, r 15(1) (amended by SI 2001/610). Service of the notice may be effected in any manner in which service of a summons may be effected under the Magistrates' Courts Rules 1981, SI 1981/552, r 99(1) or r 99(3), and r 99(2) (see PARA 690 ante) applies to the proof of service of the notice as it applies to the proof of service of a summons in respect of the offence charged in the information: r 15(2). As to the justices' chief executive see PARA 624 et seq ante.

5 See the Magistrates' Courts Act 1980 ss 10(2), 54(2). When granting an adjournment no particular form of words is necessary: *Barnsley v Marsh* [1947] KB 672, [1947] 1 All ER 874, DC.

6 Thus, it is not a ground for adjourning a summons for a criminal libel that civil proceedings between different parties for a different libel, although arising out of the same matters, are pending (*R v Evans* (1890) 54 JP 471); nor is the fact that the prosecutor has a civil remedy (*R v Bennet and Bond, ex p Bennet* (1908) 72 JP 362, DC; *Ex p Edgar* (1913) 77 JP 283). The court was not entitled to adjourn proceedings merely to allow a tenant to remain in possession of a tenement for a period longer than that permitted by the Small Tenements Recovery Act 1838 (repealed): *R v York Justices, ex p York Corpn* (1949) 113 JP 168, DC. The power to grant an adjournment cannot be exercised in a manner which undermines the statute under which the proceedings are brought or in a way which deprives a litigant of rights conferred by that statute: *R v Dudley Magistrates' Court, ex p Hollis* [1998] 1 All ER 759, DC. See also *R v Walsall Justices, ex p W* [1990] 1 QB 253, [1989] 3 All ER 460, DC (magistrates are acting outside their powers if they adjourn a case to await coming into force of imminent change in substantive law because they consider existing law unjust).

7 *R v Southampton Justices, ex p Lebern* (1907) 96 LT 697; and cf *R (Regan) v Monaghan Justices* (1911) 45 ILT 10. An adjournment may be granted for the production of evidence (see *Duffin v Markham* (1918) 88 LJKB 581, DC; *R (Dobbyn) v Belfast Justices* [1917] 2 IR 297), but this is discretionary, and where a magistrates' court dismissed a case in spite of a prosecutor's request for it to be re-opened for the purpose of proving material facts which had been omitted, the High Court refused to interfere (*Middleton v Rowlett* [1954] 2 All ER 277, [1954] 1 WLR 831, DC; see also *Royal v Prescott-Clarke* [1966] 2 All ER 366, [1966] 1 WLR 788, DC). The court may exercise its discretion in granting a long adjournment when in its opinion it is in the interests of justice to do so: *R v Southampton Justices, ex p Lebern* supra; *R v Smith* (1894) Times, 29 January. It has been held that even in cases in which the statute creating an offence gives no power of adjournment, the powers given by what is now the Magistrates' Courts Act 1980 are available: *Gelen v Hall* (1857) 2 H & N 379. The defendant has no right to have the proceedings adjourned in order to obtain a solicitor or counsel to defend him (*R v Lipscome, ex p Biggins* (1862) 26 JP 244; *R v Cambridgeshire Justices* (1880) 44 JP Jo 168), but justices will usually exercise their discretion in favour of such an adjournment (see *R v Hughes* (1879) 4 QBD 614 at 625, CCR, per Hawkins J). An appellate court will be slow to interfere with judicial discretion on the question of the adjournment of a trial; nevertheless, where the result of the order made below would be to defeat the rights of the parties or would be an injustice to one of the parties, the courts has a duty to review the order, and the principle applies with full force where the order made is of a penal character: *M(J) v M(K)* [1968] 3 All ER 878, [1968] 1 WLR 1897, DC.

8 Magistrates' Courts Act 1980 ss 10(2), 54(2). See also note 3 supra.

## **UPDATE**

### **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(v) Adjournment and Remand/A. ADJOURNMENT/708. Adjournment of plea before venue proceedings.

#### **708. Adjournment of plea before venue proceedings.**

A magistrates' court<sup>1</sup> proceeding<sup>2</sup> to inquire of the accused's intention as to plea in respect of an offence triable either way<sup>3</sup> may adjourn the proceedings at any time<sup>4</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 ie under the Magistrates' Courts Act 1980 s 17A (as added and amended) or s 17B (as added): see PARAS 657-658 ante.

3 For meaning of 'offence triable either way' see PARA 653 ante.

4 Magistrates' Courts Act 1980 s 17C (s 17C added by the Criminal Procedure and Investigations Act 1996 s 49(2), (6)). This provision applies where a person appears or is brought before a magistrates' court on or after 1 October 1997, unless he has appeared or been brought before such a court in respect of the same offence on a previous occasion falling before that day: see the Criminal Procedure and Investigations Act 1996 s 49(6), (7); and the Criminal Procedure and Investigations Act 1996 (Appointed Day No 6) Order 1997, SI 1997/2199. As to remands on adjournments see PARA 713 post.

## **UPDATE**

### **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(v) Adjournment and Remand/A. ADJOURNMENT/709. Adjournment of mode of trial proceedings.

#### **709. Adjournment of mode of trial proceedings.**

A magistrates' court<sup>1</sup> conducting the procedure for determining the mode of trial<sup>2</sup> of an offence triable either way<sup>3</sup> may adjourn the proceedings at any time<sup>4</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2   le the procedure under the Magistrates' Courts Act 1980 ss 19-23 (as amended): see PARAS 659-662 ante. The procedure for determining mode of trial begins where a person, who has attained the age of 18, appears or is brought before a magistrates' court on an information charging him with an offence triable either way: see s 18(1); and PARA 659 ante. As to informations see PARA 681 ante. As to a person's age see PARA 738 post.

3   For the meaning of 'offence triable either way' see PARA 653 ante.

4   Magistrates' Courts Act 1980 s 18(4). As to remands on adjournments see PARA 713 post.

## **UPDATE**

### **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(v) Adjournment and Remand/A. ADJOURNMENT/710. Adjournment of inquiry.

### **710. Adjournment of inquiry.**

Before beginning to inquire into an offence<sup>1</sup> as examining justices<sup>2</sup> or at any time during the inquiry, a magistrates' court<sup>3</sup> may adjourn the hearing and, if it does so, must remand the accused<sup>4</sup>. When adjourning, the court must fix the time and place for the resumed hearing at which the accused is required to appear or be brought before the court in pursuance of the remand or would be required to be brought before the court but for the power<sup>5</sup> of the court to remand the accused further in his absence with his consent<sup>6</sup>.

1   For the meaning of 'offence' see PARA 522 note 4 ante.

2   As to the use of the expression 'examining justices' see PARA 524 note 9 ante.

3   For the meaning of 'magistrates' court' see PARA 583 ante.

4   Magistrates' Courts Act 1980 s 5(1).

5   le the power contained in *ibid* s 128(3A) (as added): see PARA 718 post.

6   *Ibid* s 5(2) (amended by the Criminal Justice Act 1982 s 59, Sch 9). As to remand see PARA 712 et seq post.

## **UPDATE**

### **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(v) Adjournment and Remand/A. ADJOURNMENT/711. Adjournment for inquiries.

### **711. Adjournment for inquiries.**

A magistrates' court<sup>1</sup> may adjourn the trial of an information<sup>2</sup> for not more than four weeks at a time, or three weeks if the defendant is remanded in custody<sup>3</sup>, after convicting the accused and before sentencing him<sup>4</sup> or otherwise dealing with him, for the purpose of enabling inquiries<sup>5</sup> to be made or of determining the most suitable method of dealing with the case<sup>6</sup>. A youth court<sup>7</sup> is not required to adjourn any proceedings for an offence at any stage by reason only of the fact that the court commits the accused for trial for another offence, or that the accused is charged with another offence<sup>8</sup>.

On adjourning the trial the court may remand the accused<sup>9</sup> and must so remand him where he has attained the age of 18<sup>10</sup> if the offence is triable either way<sup>11</sup> and: (1) on the occasion on which he first appeared, or was brought, before the court to answer to the information he was in custody or, having been released on bail, surrendered to the custody of the court<sup>12</sup>; or (2) he has been remanded at any time in the course of proceedings on the information<sup>13</sup>. Where the court remands the accused, the time fixed for the resumption of the trial is that at which he is required to appear or be brought before the court in pursuance of the remand or would be required to be brought before the court but for the power of the court to remand the accused further in his absence with his consent<sup>14</sup>.

An adjourned hearing after conviction of the accused may be held before a court not composed of the same justices as convicted him, but, where among the justices composing the court which sentences or deals with him there are any who were not sitting when he was convicted, the court which sentences or deals with him must before doing so make such inquiry into the facts and circumstances of the case as will enable the justices who were not sitting when he was convicted to be fully acquainted with those facts and circumstances<sup>15</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 As to informations see PARA 681 ante.

3 This provision is directory and not mandatory, and an excessively long adjournment does not deprive the court of jurisdiction: *R v Manchester City Justices, ex p Miley* (1977) 141 JP Jo 248, DC. The discretion to adjourn must be exercised judicially: *Arthur v Stringer* (1986) 84 Cr App Rep 361 (unlawful to adjourn until defendant attains 21 years for purpose of exercising sentencing powers not available if he is under 21).

4 Upon such an adjournment all aspects of sentencing, including disqualification, must be postponed: *R v Talgarth Justices, ex p Bithell* [1973] 2 All ER 717, [1973] 1 WLR 1327, DC. However, the magistrates' court has power to impose an interim disqualification: see the Road Traffic Offenders Act 1988 s 26 (as substituted and amended); and ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 1046.

5 The inquiries to be made may include medical examination and the power is available notwithstanding that the offence charged is not punishable with imprisonment: *Boaks v Reece* [1957] 1 QB 219, [1956] 3 All ER 986, CA.

6 Magistrates' Courts Act 1980 s 10(3). This power includes power to adjourn, after convicting an offender, to enable a notice as to deportation to be given to him under the Immigration Act 1971 s 6(2), or, if this was given to him less than seven days previously, to enable the necessary seven days to elapse: see s 6(2) (amended by the Magistrates' Courts Act 1980 s 154, Sch 7 para 105).

7 As to proceedings in youth courts see PARA 746 et seq post.

8 Ibid s 10(3A) (added by the Crime and Disorder Act 1998 s 47(5)).

9 As to the power to remand in custody or on bail see PARA 712 et seq post.

10 As to a person's age see PARA 738 post.

11 Magistrates' Courts Act 1980 s 10(4) (amended by the Criminal Justice Act 1991 s 68, Sch 8 para 6(1)(a)). For the meaning of 'offence triable either way' see PARA 653 ante.

12 Magistrates' Courts Act 1980 s 10(4)(a).

13 Ibid s 10(4)(b).

14 Ibid s 10(4) (amended by the Criminal Justice Act 1982 s 59, Sch 9 para 1).

15 See the Magistrates' Courts Act 1980 s 121(7).

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(v) Adjournment and Remand/B. REMAND/712. Remand in proceedings on information.

## **B. REMAND**

### **712. Remand in proceedings on information.**

The remand of an accused person by examining justices<sup>1</sup> or where the trial of an information is adjourned<sup>2</sup> or during plea before venue proceedings<sup>3</sup> or mode of trial proceedings<sup>4</sup> may be in custody<sup>5</sup> or on bail<sup>6</sup>, save that where the occasion of the adjournment is due to the non-appearance of the prosecutor, the remand must be on bail unless the accused has been brought to the court from custody, or bail is not appropriate because of the accused's failure to find sureties<sup>7</sup>.

1 As to the use of the expression 'examining justices' see PARA 524 note 9 ante. As to the power of examining justices to remand see PARA 716 post.

2 As to remand on adjournment during the trial see PARAS 707, 711 ante. As to informations see PARA 681 ante.

3 As to the power to adjourn plea before venue proceedings see PARA 708 ante.

4 As to the power to adjourn mode of trial proceedings see PARA 709 ante. As to remand in mode of trial proceedings see PARA 713 post.

5 See the Magistrates' Courts Act 1980 s 128(1)(a) (as amended); and PARA 716 post. Where the general right to bail applies a remand in custody may only be ordered as provided in the Bail Act 1976 s 4, Sch 1 (as amended): see s 4(1); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1169. A justice of the peace may not take part in trying the issue of a defendant's guilt on the summary trial of an information if in the course of the same proceedings he has been informed, for the purpose of determining whether the defendant is to be granted bail, that he has one or more previous convictions: Magistrates' Courts Act 1980 s 42(1). For this purpose any committal proceedings from which the proceedings on the summary trial arose are treated as part of the trial: s 42(2).

6 See ibid s 128(1)(b); and PARA 716 post. A person charged with treason must not be granted bail except by order of a judge of the High Court or the Secretary of State: s 41.

7 See *ibid* s 15(2). As to remands after conviction for medical examinations see PARA 723 post. As to remands of children and young persons see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1247 et seq.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(v) Adjournment and Remand/B. REMAND/713. Remand in plea before venue and in mode of trial proceedings.

### 713. Remand in plea before venue and in mode of trial proceedings.

Where a magistrates' court<sup>1</sup> adjourns proceedings to inquire of the accused's intention as to plea in respect of an offence triable either way<sup>2</sup> or to determine the mode of trial<sup>3</sup> of an offence triable either way it may remand the accused if he is present and must remand him if: (1) on the occasion on which he first appeared, or was brought, before the court to answer the information<sup>4</sup> he was in custody or, having been bailed, surrendered to the custody of the court<sup>5</sup>; or (2) he has been remanded at any time in the course of proceedings on the information<sup>6</sup>. On a remand the time fixed for resuming the proceedings is that at which the accused is required to appear or be brought before the court in pursuance of the remand or would be required to be brought before the court but for the power<sup>7</sup> of the court to remand the accused further in his absence with his consent<sup>8</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 *Ie* under the Magistrates' Courts Act 1980 s 17A (as added and amended) or s 17B (as added): see PARAS 657-658 ante. As to the power to adjourn plea before venue proceedings see PARA 708 ante. For the meaning of 'offence triable either way' see PARA 653 ante.

3 *Ie* under *ibid* ss 19-23 (as amended): see PARAS 659-662 ante. As to adjournments in mode of trial proceedings see PARA 709 ante.

4 As to informations see PARA 681 ante.

5 Magistrates' Courts Act 1980 s 17C(a) (s 17C added by the Criminal Procedure and Investigations Act 1996 s 49(2), (6)), Magistrates' Courts Act 1980 s 18(4)(a). Section 17C (as added) applies where a person appears or is brought before a magistrates' court on or after 1 October 1997, unless he has appeared or been brought before such a court in respect of the same offence on a previous occasion falling before that day: see the Criminal Procedure and Investigations Act 1996 s 49(6), (7); and the Criminal Procedure and Investigations Act 1996 (Appointed Day No 6) Order 1997, SI 1997/2199.

6 Magistrates' Courts Act 1980 s 17C(b) (as added: see note 5 *supra*), s 18(4)(b).

7 *Ie* the power contained in *ibid* s 128(3A) (as added): see PARA 718 post.

8 *Ibid* s 17C (as added: see note 5 *supra*), s 18(4) (amended by the Criminal Justice Act 1982 s 59, Sch 9 para 1).

## UPDATE

## **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(v) Adjournment and Remand/B. REMAND/714. Remand in proceedings on complaint.

### **714. Remand in proceedings on complaint.**

The power to remand a defendant in proceedings on complaint<sup>1</sup> is restricted to cases in which the defendant has been brought before the court by warrant issued because of his failure to attend after having been served with a summons requiring his attendance<sup>2</sup>, and the hearing is then adjourned<sup>3</sup>. In these circumstances the defendant may be remanded, in custody or on bail<sup>4</sup>, to the time fixed for the resumption of the hearing<sup>5</sup> if he has not already given evidence in the proceedings<sup>6</sup>.

1 As to complaints see PARA 681 ante.

2 See the Magistrates' Courts Act 1980 s 55(2); and PARA 693 ante. Section 55 does not apply to a complaint to enforce sums payable by a magistrates' court maintenance order: see s 93(3). In the application of the Magistrates' Courts Act 1980 to civil contempt proceedings under s 63(3) (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq), where the proceedings are taken of the court's own motion, s 55 applies as if a complaint had been made against the person against whom the proceedings are taken: Contempt of Court Act 1981 s 17(2), Sch 3. For the meaning of 'magistrates' court' see PARA 583 ante.

3 See the Magistrates' Courts Act 1980 s 55(5).

4 See *ibid* s 128(1) (as amended); and PARA 716 post.

5 See *ibid* s 55(7).

6 See *ibid* s 55(6). Where a complaint is made under s 115 (binding over to keep the peace or be of good behaviour) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151), the power of the magistrates' court to remand the defendant for non-appearance under s 55(5) (see the text and notes 1-3 supra) is not subject to the restrictions imposed by s 55(6): s 115(2).

## **UPDATE**

## **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(v) Adjournment and Remand/B. REMAND/715. Further remand.

### **715. Further remand.**

A person brought before a magistrates' court<sup>1</sup> after a remand may be further remanded<sup>2</sup>. This may be done in that person's absence if a magistrates' court is satisfied that he is unable by reason of illness or accident to appear or be brought before the court at the expiration of the period for which he had been remanded<sup>3</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 Magistrates' Courts Act 1980 s 128(3). Where a transfer direction under the Mental Health Act 1983 s 52 has been given in respect of a person remanded in custody, he may be further remanded without his being brought before the court, and if the court further remands him in custody, whether or not he is brought before the court, the period of remand is deemed for this purpose not to have expired: see s 52(3); and MENTAL HEALTH vol 30(2) (Reissue) PARA 540. In these circumstances the justices' chief executive for the court must give written notice of the further remand to the managers of the hospital where that person is detained: see the Magistrates' Courts Rules 1981, SI 1981/552, r 26 (amended by SI 2001/610); Interpretation Act 1978 s 17(2) (a). As to the cessation of such a transfer direction see the Magistrates' Courts Rules 1981, SI 1981/552, r 110 (added by SI 1984/1552; and amended by SI 2001/610). For other powers to remand in a person's absence see PARA 717 post. As to the justices' chief executive see PARA 624 et seq ante.

3 Magistrates' Courts Act 1980 s 129(1). For a form of commitment where a person in custody is unable to appear through illness or accident see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Form 10. See PARA 505 note 12 ante. Where a person is further remanded on bail in his absence, the court must give him and his sureties, if any, notice thereof: Magistrates' Courts Rules 1981, SI 1981/552, r 91(b) (substituted by SI 1985/1944).

## **UPDATE**

### **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### **715 Further remand**

NOTE 3--SI 1981/553 Sch 2 Form 10 revoked: SI 2003/1236.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(v) Adjournment and Remand/B. REMAND/716. Remand in custody.

### **716. Remand in custody.**

A person remanded in custody<sup>1</sup> is committed to custody to be brought before the magistrates' court<sup>2</sup> at the end of the period of remand or at such earlier time as the court may require<sup>3</sup>, subject to the power of the court in certain circumstances to further remand an accused in custody without his being brought before the court<sup>4</sup>. A person may not be remanded in custody<sup>5</sup> for more than eight clear days except that<sup>6</sup>:

219 (1) if the court remands him on bail, it may remand him for a longer period if he and the other party consents<sup>7</sup>;

220 (2) where the adjournment is for inquiries after conviction<sup>8</sup> or for medical examination<sup>9</sup>, the court may remand him for the period of the adjournment<sup>10</sup>; or



- 221 (3) where he is charged with an offence triable either way<sup>11</sup> and it falls to the court to try the case summarily but the court is not at the time so constituted, and sitting in such a place, as will enable it to proceed with the trial, the court may remand him until the next occasion on which it will be practicable for it to be so constituted, and to sit in such a place, notwithstanding that the remand is for more than eight clear days<sup>12</sup>; or
- 222 (4) if the court is satisfied that by reason of illness or accident the person remanded is unable to appear or be brought before the court, it may in his absence remand him for a further time<sup>13</sup>.

An accused may also be remanded in custody for more than eight days in geographical areas specified by order and in respect of proceedings specified by order<sup>14</sup>. When an accused person remanded in custody is already detained under a custodial sentence, the period for which he is remanded may be up to 28 clear days<sup>15</sup>.

Where the period of remand does not exceed three clear days or, in the case of a person under the age of 17<sup>16</sup>, 24 hours, the court may commit him to detention at a police station<sup>17</sup>.

1 Where a person has been remanded in custody by a magistrates' court on adjourning a case under the Powers of Criminal Courts (Sentencing) Act 2000 s 11 (see PARA 723 post), the Magistrates' Courts Act 1980 s 5 (as amended) (see PARA 710 ante), s 10 (as amended) (see PARAS 707, 711 ante), or s 18 (as amended) (see PARAS 659, 709 ante) the Crown Court may grant bail to him: see the Supreme Court Act 1981 s 81(1)(g) (added by the Criminal Justice Act 1982 s 60(1); and amended by the Powers of the Criminal Courts Act 2000 s 165(1), Sch 9 para 87). See further the Supreme Court Act 1981 s 81(1H), (1J) (both as added); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1187.

As to custody time limits see the Prosecution of Offences Act 1985 s 22 (as amended); the Prosecution of Offences (Custody Time Limits) Regulations 1987, SI 1987/299 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1152.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 See the Magistrates' Courts Act 1980 s 128(1)(a) (amended by the Criminal Justice Act 1982 s 59, Sch 9 para 2). For a form of order directing a prison governor to bring up a prisoner on remand see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Form 141. See PARA 505 note 12 ante.

4 Where on adjourning a case under the Magistrates' Courts Act 1980 s 5 (as amended) (see PARA 710 ante), s 10(1) (see PARA 707 ante), s 17C (as added) (see PARA 708 ante) or s 18(4) (as amended) (see PARA 709 ante) the court proposes to remand or further remand a person in custody, and he is before the court, and he is legally represented in that court, it is the court's duty to: (1) explain the effect of s 128(3A), (3B) (as added and amended) (power to further remand in persons absence) (see PARA 718 post) to him in ordinary language; and (2) inform him in ordinary language that, notwithstanding the procedure for a remand without his being brought before the court, he would be brought before a court for the hearing and determination of at least every fourth application for his remand, and of every application for his remand heard at a time when it appeared to the court that he had no legal representative acting for him in the case: s 128(1A) (s 128(1A)-(1C) added by the Criminal Justice Act 1982 Sch 9 paras 3, 4; and the Magistrates' Courts Act 1980 s 128(1A) (as added) amended by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 25; and the Criminal Procedure and Investigations Act 1996 ss 49(5)(a), 52(1), (3), 80, Sch 5). The amendment made by the Criminal Procedure and Investigations Act 1996 applies in relation to appearances before a magistrates' court on or after 1 October 1997, unless he has appeared or been brought before such a court in respect of the same offence on a previous occasion falling before that day: see the Criminal Procedure and Investigations Act 1996 s 49(6), (7); and the Criminal Procedure and Investigations Act 1996 (Appointed Day No 6) Order 1997, SI 1997/2199. For these purposes, a person is to be treated as legally represented in a court if, but only if, he has the assistance of a legal representative to represent him in the proceedings in that court: Magistrates' Courts Act 1980 s 128(1B) (as so added; and amended by the Courts and Legal Services Act 1990 Sch 18 para 25). After explaining to an accused as provided in the Magistrates' Courts Act 1980 s 128(1A) (as added and amended), the court must ask him whether he consents to the hearing and determination of such applications in his absence: s 128(1C) (as so added).

5 Where the general right to bail applies, a remand in custody may only be ordered as provided in the Bail Act 1976 s 4, Sch 1 (as amended): see s 4(1); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1169.

6 Magistrates' Courts Act 1980 s 128(6) (amended by the Criminal Justice Act 1988 s 170(1), Sch 15 paras 65, 69(2)).

7 Magistrates' Courts Act 1980 s 128(6)(a). See note 5 *supra*.

8 *Ie* under *ibid* s 10(3): see PARA 711 *ante*.

9 *Ie* under the Powers of the Criminal Courts (Sentencing) Act 2000 s 11: see PARA 723 *post*.

10 Magistrates' Courts Act 1980 s 128(6)(b) (amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 75).

11 For the meaning of 'offence triable either way' see PARA 653 *ante*.

12 Magistrates' Courts Act 1980 s 128(6)(c).

13 See *ibid* s 129(1). See further PARA 720 *post*. If the Secretary of State is satisfied that the defendant is suffering from mental illness or severe mental impairment of a nature or degree which not only makes it appropriate for his detention in a hospital for treatment but also that the defendant is in urgent need of such treatment, he may give a transfer direction to that effect: see the Mental Health Act 1983 s 48(1); and MENTAL HEALTH vol 30(2) (Reissue) PARA 536. Where a transfer direction has been given by the Secretary of State under s 48 (as amended) in respect of a person remanded in custody by a magistrates' court and, before the direction ceases to have effect, that person is committed or sent for trial, the justices' chief executive for the court must give notice in the prescribed form to the governor of the prison to which persons of the sex of that person are committed or sent by that court if committed or sent in custody for trial, and to the managers of the hospital where he is detained: Magistrates' Courts Rules 1981, SI 1981/552, r 10 (amended by SI 2000/3361; and SI 2001/610); Interpretation Act 1978 s 17(2)(a).

14 See the Magistrates' Courts Act 1980 s 128A(1) (s 128A added by the Criminal Justice Act 1988 s 155(1); and s 128A(1) (as added) amended by the Criminal Procedure and Investigations Act 1996 Sch 5). A statutory instrument containing an order under the Magistrates' Courts Act 1980 s 128A (as added and amended) may not be made unless a draft of the instrument has been laid before Parliament and been approved by a resolution of each House: s 128A(4) (as so added). As to the orders which have been made see the Magistrates' Courts (Remands in Custody) Order 1989, SI 1989/970 (amended by SI 1997/35); and the Magistrates' Courts (Remands in Custody) Order 1991, SI 1991/2667 (amended by SI 1997/35). A magistrates' court may remand the accused in custody for a period exceeding eight clear days if: (1) it has previously remanded him in custody for the same offence; and (2) he is before the court, but only if, after affording the parties an opportunity to make representations, it has set a date on which it expects that it will be possible for the next stage in the proceedings, other than a hearing relating to a further remand in custody or on bail, to take place, and only for a period ending not later than that date, or for a period of 28 clear days, whichever is the less: Magistrates' Courts Act 1980 s 128A(2) (as so added). An accused's right to apply for bail during the period of remand is not affected: s 128A(3) (as so added).

Where a court is considering exercising its power under s 128A (as added and amended) to remand in custody for more than eight days, it must have regard to the total length of time which the accused would spend in custody if it did so: Bail Act 1976 s 4, Sch 1 para 9B (added by the Criminal Justice Act 1988 s 155(2)).

15 Magistrates' Courts Act 1980 s 131(1). The court must inquire as to the expected date of his release from that detention and, if it appears that it will be before 28 clear days have expired, he may not be remanded in custody for more than eight clear days or, if longer, a period ending with that date: s 131(2).

16 As to a person's age see PARA 738 *post*.

17 Magistrates' Courts Act 1980 s 128(7) (amended by the Police and Criminal Evidence Act 1984 s 48); Children and Young Persons Act 1969 s 23(14) (as substituted and amended); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1247. A justice of the peace must not commit any person to a prison, young offender institution or a remand centre, or to detention at a police station under the Magistrates' Courts Act 1980 s 128(7) (as amended) except by warrant of commitment: Magistrates' Courts Rules 1981, SI 1981/552, r 94 (amended by SI 1988/2132).

Where a person is committed to detention at a police station under the Magistrates' Courts Act 1980 s 128(7) (as amended): (1) he must not be kept in such detention unless there is a need for him to be so detained for the purposes of inquiries into other offences; (2) if kept in such detention, he must be brought back before the magistrates' court which committed him as soon as that need ceases; (3) he must be treated as a person in police detention to whom the duties under the Police and Criminal Evidence Act 1984 s 39 (as amended) (responsibilities in relation to persons detained) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 946) relate; (4) his detention must be subject to periodic review at the times set out in s 40 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 1001); Magistrates' Courts Act 1980 s 128(8) (added by the Police and Criminal Evidence Act 1984 s 48).

## **UPDATE**

### **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### **716 Remand in custody**

NOTE 1--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1.

NOTE 3--SI 1981/553 Sch 2 Form 141 revoked: SI 2003/1236.

NOTE 14--SI 1989/970 revoked, SI 1991/2667 further amended: SI 2005/617.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(v) Adjournment and Remand/B. REMAND/717. Remand in custody in absence of accused.

### **717. Remand in custody in absence of accused.**

Where a person has been remanded in custody, and the remand was not a remand for a period exceeding eight clear days<sup>1</sup>, the court may further remand him<sup>2</sup> on an adjournment<sup>3</sup> without his being brought before it if it is satisfied that he<sup>4</sup>:

- 223 (1) gave his consent<sup>5</sup> to the hearing and determination in his absence of any application for his remand on an adjournment of the case<sup>6</sup>;
- 224 (2) has not<sup>7</sup> been remanded without being brought before the court on more than two such applications immediately preceding the application which the court is hearing<sup>8</sup>; and
- 225 (3) has not withdrawn his consent to their being so heard and determined<sup>9</sup>.

However, the court may not exercise this power to adjourn in a person's absence if it appears to it, on an application for a further remand being made to it, that the person to whom the application relates has no legal representative acting for him in the case, whether present in court or not<sup>10</sup>.

Where: (a) a person has been remanded in custody on an adjournment of a case<sup>11</sup>; (b) an application is subsequently made for his further remand on such an adjournment<sup>12</sup>; (c) he is not brought before the court which hears and determines the application<sup>13</sup>; and (d) that court is not satisfied as mentioned in heads (1) to (3) above<sup>14</sup>, the court must adjourn the case and remand him in custody for the period for which it stands adjourned<sup>15</sup>. Such an adjournment must be for the shortest period that appears to the court to make it possible for the accused to be brought before it<sup>16</sup>.

Where on an adjournment of a case<sup>17</sup> a person has been remanded in custody without being brought before the court<sup>18</sup>, and it subsequently appears to the court which remanded him in custody, or to an alternate magistrates' court to which<sup>19</sup> he is remanded<sup>20</sup>, that he ought not to have been remanded in custody in his absence, the court must require him to be brought before it at the earliest time that appears to the court to be possible<sup>21</sup>.

- 1    le under the Magistrates' Courts Act 1980 s 128A (as added and amended): see PARA 716 ante.
- 2    le otherwise than in the exercise of the power conferred by ibid s 128A (as added and amended): see PARA 716 ante.
- 3    le under ibid s 5 (as amended) (see PARA 710 ante), s 10(1) (see PARA 707 ante), s 17C (as added) (see PARA 708 ante) or s 18(4) (as amended) (see PARA 709 ante).
- 4    Ibid s 128(3A) (s 128(3A)-(3E) added by the Criminal Justice Act 1982 s 59, Sch 9 paras 3, 4; and the Magistrates' Courts Act 1980 s 128(3A) (as added) amended by the Criminal Justice Act 1988 s 170(1), Sch 15 paras 65, 69(1); and the Criminal Procedure and Investigations Act 1996 ss 49(5)(a), (6), 52(1), (3), 80, Sch 5). The amendment made by the Criminal Procedure and Investigations Act 1996 applies in relation to appearances before a magistrates' court on or after 1 October 1997, unless he has appeared or been brought before such a court in respect of the same offence on a previous occasion falling before that day: see the Criminal Procedure and Investigations Act 1996 s 49(6), (7); and the Criminal Procedure and Investigations Act 1996 (Appointed Day No 6) Order 1997, SI 1997/2199.
- 5    le either in response to a question under the Magistrates' Courts Act 1980 s 128(1C) (as added) (see PARA 716 ante), or otherwise.
- 6    Ibid s 128(3A)(a) (as added: see note 4 supra). The text refers to an adjournment of the case under any of the provisions mentioned in note 3 supra.
- 7    le by virtue of ibid s 128(3A) (as added and amended).
- 8    Ibid s 128(3A)(b) (as added: see note 4 supra).
- 9    Ibid s 128(3A)(c) (as added: see note 4 supra).
- 10   Ibid s 128(3B) (as added (see note 4 supra); and amended by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 25).
- 11   Magistrates' Courts Act 1980 s 128(3C)(a) (as added (see note 4 supra); and amended by the Criminal Procedure and Investigations Act 1996 s 49(5)(a), (6)). The amendment made by the Criminal Procedure and Investigations Act 1996 applies in relation to appearances before a magistrates' court on or after 1 October 1997, unless he has appeared or been brought before such a court in respect of the same offence on a previous occasion falling before that day: see the Criminal Procedure and Investigations Act 1996 s 49(6), (7); and the Criminal Procedure and Investigations Act 1996 (Appointed Day No 6) Order 1997, SI 1997/2199. The text refers to an adjournment of the case under any of the provisions mentioned in note 3 supra.
- 12   Magistrates' Courts Act 1980 s 128(3C)(b) (as added: see note 4 supra).
- 13   Ibid s 128(3C)(c) (as added: see note 4 supra).
- 14   Ibid s 128(3C)(d) (as added: see note 4 supra).
- 15   Ibid s 128(3C) (as added: see note 4 supra).
- 16   Ibid s 128(3D) (as added: see note 4 supra).
- 17   le under any of the provisions mentioned in note 3 supra.
- 18   Magistrates' Courts Act 1980 s 128(3E)(a) (as added (see note 4 supra); and amended by the Criminal Procedure and Investigations Act 1996 ss 49(5)(a), (6)). The amendment made by the Criminal Procedure and Investigations Act 1996 applies in relation to appearances before a magistrates' court on or after 1 October 1997, unless he has appeared or been brought before such a court in respect of the same offence on a previous occasion falling before that day: see the Criminal Procedure and Investigations Act 1996 s 49(6), (7); and the Criminal Procedure and Investigations Act 1996 (Appointed Day No 6) Order 1997, SI 1997/2199.
- 19   le under the Magistrates' Courts Act 1980 s 130 (as amended): see PARA 724 post.
- 20   Ibid s 128(3E)(b) (as added: see note 4 supra).
- 21   Ibid s 128(3E) (as added: see note 4 supra).

## UPDATE

## 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(v) Adjournment and Remand/B. REMAND/718. Remand on bail in criminal proceedings.

### 718. Remand on bail in criminal proceedings.

A remand in criminal proceedings<sup>1</sup> may be on bail<sup>2</sup>, by directing a person to appear before the magistrates' court<sup>3</sup> at the end of the period of remand<sup>4</sup> or at any time and place to which during the course of the proceedings the hearing may be from time to time adjourned<sup>5</sup>.

A person granted bail in criminal proceedings is under a duty to surrender to custody<sup>6</sup>. He may be required, before being released on bail, to provide a surety or sureties to secure his surrender to custody<sup>7</sup> and to comply, before his release on bail or later, with such requirements<sup>8</sup> as appear to the court to be necessary to secure that he: (1) surrenders to custody<sup>9</sup>; (2) does not commit an offence while on bail<sup>10</sup>; (3) does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person<sup>11</sup>; (4) makes himself available for the purpose of enabling inquiries or a report to be made to assist the court in dealing with him for the offence<sup>12</sup>; and (5) before the time appointed for him to surrender to custody, attends an interview with an authorised advocate or authorised litigator<sup>13</sup>. A court may require a defendant as a condition of his bail to reside in a bail hostel to enable a report to be made on his suitability to receive a sentence involving a condition of hostel residence and may require him to comply with the rules of such a hostel<sup>14</sup>. In the case of a person accused of murder, the court granting bail must, unless satisfactory reports as to his mental condition have already been obtained, require the accused to undergo examination by two medical practitioners one of whom must be approved for the purpose<sup>15</sup>, and that he attend such institution or place as the court directs and comply with any directions given by the practitioners for that purpose<sup>16</sup>. The accused may be required before release on bail to give security for his surrender to custody<sup>17</sup>. No recognisance may be taken from the bailed person himself<sup>18</sup> and no requirement other than those stated above may be imposed on him as a condition of bail<sup>19</sup>. Where a magistrates' court<sup>20</sup> imposes any requirement to be complied with before a person's release on bail, it may give directions as to the manner in which and the person or persons before whom the requirement may be complied with<sup>21</sup>.

1    Ie where the magistrates' court is inquiring into or trying an offence alleged to have been committed by the person to be bailed or has convicted him of an offence: see the Magistrates' Courts Act 1980 s 128(1)(b). For the meaning of 'magistrates' court' see PARA 583 ante.

2    'Bail in criminal proceedings' means bail granted in or in connection with proceedings for an offence to a person accused or convicted of the offence, or bail grantable in connection with an offence to a person under arrest for the offence or for whose arrest for the offence a warrant (indorsed for bail) is being issued: Bail Act 1976 s 1(1). 'Bail' means bail grantable under the law, including common law, for the time being in force: s 1(2). 'Offence' includes an alleged offence: s 2(2). Bail in criminal proceedings must be granted, and in particular must be granted unconditionally or conditionally, in accordance with the Bail Act 1976: s 1(6). As to the procedure where the prosecution may, for certain offences, appeal to the Crown Court against a decision of the magistrates' court to grant bail see the Magistrates' Courts Rules 1981, SI 1981/552, r 93A (added by SI 1994/1481; and amended by SI 2001/610). As to the procedure to be followed on reconsideration of a decision

to grant bail see the Magistrates' Courts Rules 1981, SI 1981/552, r 93B (added by SI 1995/585; and amended by SI 2001/610).

Where the accused is committed or sent for trial on bail, the justices' chief executive for the court must give notice of this in writing to the governor of the prison to which persons of the sex of the person committed or sent are committed or sent by that court if committed or sent in custody for trial and also, if the person committed or sent is under 21, to the governor of the remand centre to which he would have been committed or sent if the court had refused him bail: Magistrates' Courts Rules 1981, SI 1981/552, r 9(1) (amended by SI 2000/3361; and SI 2001/610). Where a corporation is committed or sent for trial, the justices' chief executive for the court must give notice to the governor of the prison to which would be committed or sent a man committed or sent by that court in custody for trial: Magistrates' Courts Rules 1981, SI 1981/552, r 9(2) (amended by SI 2000/3361; and SI 2001/610).

3 See the Magistrates' Courts Act 1980 s 128(1)(b).

4 See *ibid* s 128(4)(a).

5 See *ibid* s 128(4)(b). See also PARA 719 note 5 post. Any decision as to bail in criminal proceedings must be recorded (see the Bail Act 1976 s 5 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1173) by way of an entry in the register in the prescribed form: see the Magistrates' Courts Rules 1981, SI 1981/552, r 90 (amended by SI 1983/523; and SI 1988/2132); Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Forms 149-153 (amended by SI 1983/524; SI 1988/2132; and SI 1994/1481). As to the duty to keep the register see PARA 628 ante. See PARA 505 note 12 ante. Where the court hears full argument as to bail, the clerk of the court must take a note of that argument: Magistrates' Courts Rules 1981, SI 1981/552, r 90A (added by SI 1993/1183). As to the right of the prosecution to appeal against a decision of a magistrates' court to grant bail see the Bail (Amendment) Act 1993; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1186.

6 Bail Act 1976 s 3(1). Failure without reasonable cause to surrender to custody is an offence: s 6(1). In relation to a person released on bail, 'surrender to custody' means surrendering himself into the custody of the court or constable (according to the requirement of the grant of bail) at the time and place for the time being appointed for him to do so: s 2(2). Where there is reasonable cause to fail to surrender to custody at the appointed place, it is an offence to fail to surrender to custody as soon after the appointed time as is reasonably practicable: s 6(2). It is for the accused to show that he had reasonable cause: s 6(3). Failure to give the accused a copy of the record of the decision does not constitute reasonable cause: s 6(4).

Offences under s 6(1), (2) are punishable either on summary conviction or as if they were criminal contempts of court: s 6(5). A person convicted summarily and not committed to the Crown Court for sentence (see s 6(6); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1199) is liable to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale or both: Bail Act 1976 s 6(7) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. A person so committed for sentence or dealt with as for a contempt is liable to imprisonment for a term not exceeding 12 months or a fine or both: Bail Act 1976 s 6(7). In proceedings for such an offence a document purporting to be a copy of the part of the record of the decision relating to the time and place for surrender, duly certified, is evidence of that time and place: see s 6(8), (9)(a); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1199. A magistrates' court record must be duly certified by the justices' chief executive or an officer authorised by him: see s 6(9)(b), (c)(i); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1199. As to the justices' chief executive see PARA 624 et seq ante.

A defendant on bail surrenders to the custody of the court when he attends and overtly subjects himself to the direction of the court (*R v Central Criminal Court, ex p Guney* [1995] 2 All ER 577, [1995] 2 Cr App Rep 350, 14; affd [1996] AC 616, [1996] 2 All ER 705), such as where he has reported to a court official designated for that purpose and where he is allowed to remain at liberty until his case is called for. He should be clearly instructed not to leave the court building without consent: *DPP v Richards* [1988] QB 701, [1988] 3 All ER 406, DC.

Where bail was originally granted by a court, rather than by police, it is neither necessary nor desirable to lay an information in order to commence proceedings for the failure to surrender: see *Practice Note* [1987] 1 All ER 128, sub nom *Practice Direction (Bail: Failure to Surrender)* [1987] 1 WLR 79. As to informations see PARA 681 ante.

7 Bail Act 1976 s 3(4). In such a case the surety's recognisance may be conditioned to secure that the person bailed appears at every time and place to which during the course of the proceedings the hearing may be from time to time adjourned, and also before the Crown Court in the event of the bailed person being committed for trial there: Magistrates' Courts Act 1980 s 128(4)(c). See also PARA 719 note 5 post. Apart from this, he cannot be required to provide sureties: see the Bail Act 1976 s 3(3)(b). See also *R v Wells Street Magistrates' Court, ex p Albanese* [1982] QB 333, [1981] 3 All ER 769 (consideration should be given to warning sureties that bail conditions might be varied, especially if they were concerned about those conditions). A solicitor, legal executive or court clerk should have reasonable grounds for believing a surety has the ability to

pay if necessary: *R v Crown Court at Birmingham, ex p Rashid Ali*; *R v Bristol Magistrates' Court, ex p Davies*; *R v Immigration Appellate Authority, ex p Davies* (1998) 163 JP 145, [1999] Crim LR 504.

8 A parent or guardian of a child or young person who consents to be surety for the child or young person may be required, with his consent and subject to certain limitations, to secure that the child or young person complies with any of these requirements: see the Bail Act 1976 s 3(7); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1167. Although there is no specific provision in Sch 1 Pt II, conditions may be imposed in respect of non-imprisonable offences: *R v Bournemouth Magistrates' Court, ex p Cross, Griffin and Pamment* (1988) 153 JP 440, 89 Cr App Rep 90, DC.

9 Bail Act 1976 s 3(6)(a).

10 Ibid s 3(6)(b). Before imposing such a condition all that is required of magistrates is that they perceive a real and not a fanciful risk that the defendant will commit an offence on bail: *R v Mansfield Justices, ex p Sharkey* [1985] QB 613, [1985] 1 All ER 193, DC.

11 Bail Act 1976 s 3(6)(c).

12 Ibid s 3(6)(d).

13 Ibid s 3(6)(e) (added by the Crime and Disorder Act 1998 s 54(2)). For these purposes, 'authorised advocate' and 'authorised litigator' have the same meanings as in the Courts and Legal Services Act 1990 s 119(1) (see LEGAL PROFESSIONS vol 65 (2008) PARAS 497-498): Bail Act 1976 s 3(6)(e) (as so added).

14 See ibid s 3(6ZA) (as added), Sch 1 para 8 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1167.

15 Ie under the Mental Health Act 1983 s 12 (as amended): see MENTAL HEALTH vol 30(2) (Reissue) PARA 482.

16 See the Bail Act 1976 s 3(6A), (6B) (as added and amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1167.

17 Ibid s 3(5) (amended by the Crime and Disorder Act 1998 ss 54(1), 120(2), Sch 10). The security may be given by him or on his behalf: Bail Act 1976 s 3(5). Apart from this, no security may be taken from him: s 3(3) (a).

18 Ibid s 3(2).

19 Ibid s 3(3)(c).

20 Ie under ibid s 3(5) (as amended) or s 3(6) (as amended): see the text and notes 8-17 supra.

21 Magistrates' Courts Rules 1981, SI 1981/552, r 85. As to release on bail see further PARA 721 post.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### 718 Remand on bail in criminal proceedings

NOTE 2--'Bail in criminal proceedings' also means bail grantable in connection with extradition proceedings under the Extradition Act 2003 in respect of an offence: Bail Act 1976 ss 1(1), 2(2) (amended by Extradition Act 2003 s 198(2), (3)).

NOTE 5--SI 1981/553 Sch 2 Forms 149-153 revoked: SI 2003/1236.

NOTE 6--See *R v Scott* [2007] EWCA Crim 2757, (2008) 172 JP 149 (not unreasonable for judge to find defendant, who was only slightly late, guilty of offence of failing to surrender to bail).

NOTES 8-13--See *R (on the application of the Crown Prosecution Service) v Chorley Justices* [2002] EWHC 2162 (Admin), (2002) 166 JP 764, DC.

TEXT AND NOTE 13--Reference to an authorised advocate or authorised litigator is now to a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act) (see LEGAL PROFESSIONS vol 65 (2008) PARA 512); Bail Act 1976 s 3(6)(e) (amended by Legal Services Act 2007 Sch 21 para 34).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(v) Adjournment and Remand/B. REMAND/719. Remand on bail in civil proceedings.

### **719. Remand on bail in civil proceedings.**

In civil proceedings a person may be remanded on bail<sup>1</sup> by taking from him a recognisance<sup>2</sup>, with or without sureties, conditioned for his appearance before the magistrates' court<sup>3</sup> at the end of the period of remand<sup>4</sup> or at every time and place to which during the course of the proceedings the hearing may from time to time be adjourned<sup>5</sup>.

1 A magistrates' court has an unfettered discretion whether or not to grant bail in civil proceedings, although bail is in practice refused only where there is no other practicable means of ensuring the defendant's presence where this is essential, or where there is a substantial likelihood that, if released, the defendant might repeat the act complained of.

2 Alternatively, instead of taking a recognisance, the court may fix the amount of the recognisance with a view to its being taken subsequently in accordance with the Magistrates' Courts Act 1980 s 128 (as amended): s 128(1). If it does so, however, it must meanwhile commit the defendant to custody under s 128(1)(a) (as amended) (see PARA 716 ante): see s 128(2).

3 See *ibid* s 128(1)(c).

4 See *ibid* s 128(4)(a).

5 See *ibid* s 128(4)(b). The fixing at any time of the time for the bailed person to appear is deemed to be a remand, but nothing in s 128(4), (5) deprives the court of power at any subsequent hearing to remand him afresh: s 128(5).

## **UPDATE**

### **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(v) Adjournment and Remand/B. REMAND/720. Period of remand and enlargement of recognisance.

### **720. Period of remand and enlargement of recognisance.**



A remand on bail may be for a period exceeding eight clear days, which ordinarily is the maximum period of remand<sup>1</sup>, if the parties in the proceedings consent<sup>2</sup>. However, a person remanded for a period exceeding eight clear days on condition that he is to remain in custody until such time as the recognisances of his sureties have been taken must be brought before the magistrates' court at the end of eight clear days, or at such earlier time as may be specified in the warrant, unless in the meantime the sureties have entered into their recognisances<sup>3</sup>.

Where a person remanded on bail is further remanded in his absence because of his inability to attend by reason of illness or accident<sup>4</sup>, and in any event if he fails to appear and the magistrates' court fixes the hearing for a later time, his recognisance, if any<sup>5</sup>, and those of his sureties may be enlarged to that later time<sup>6</sup>. Notice of the enlargement must be given to the person further remanded and to his sureties by the magistrates' court<sup>7</sup>.

1 See PARA 716 ante.

2 See the Magistrates' Courts Act 1980 s 128(6)(a); and PARA 716 ante.

3 See the Magistrates' Courts Rules 1981, SI 1981/552, r 23. As to release on bail see PARA 721 post.

4 See PARA 716 ante.

5 He will not have given a recognisance in criminal proceedings.

6 See the Magistrates' Courts Act 1980 s 129(2)-(4).

7 See the Magistrates' Courts Rules 1981, SI 1981/552, r 84; and the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Forms 132, 133 (amended by SI 2001/615). See PARA 505 note 12 ante.

## **UPDATE**

### **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### **720 Period of remand and enlargement of recognisance**

NOTE 7--SI 1981/553 Sch 2 Forms 132, 133 revoked: SI 2003/1236.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(v) Adjournment and Remand/B. REMAND/721. Release on bail.

### **721. Release on bail.**

The justices' chief executive<sup>1</sup> for a magistrates' court<sup>2</sup> which has fixed the amount in which a person, including any surety, is to be bound by a recognisance<sup>3</sup> or has imposed any requirement<sup>4</sup> to be complied with before a person's release on bail must issue a certificate<sup>5</sup> showing the amount and conditions, if any, of the recognisance or, as the case may be, stating the requirement<sup>6</sup>. A person authorised to take the recognisance or do anything in relation to the compliance with the requirement is not required to take or do it without production of such

a certificate<sup>7</sup>. The justices' chief executive for the court must send the certificate to the governor or keeper of the prison or place where the person in custody is detained<sup>8</sup>. When satisfied that the recognisances of all sureties required have been taken and that all requirements have been complied with, the governor or keeper must release the person in custody unless he is in custody for some other cause<sup>9</sup>.

1 As to the justices' chief executive see PARA 624 et seq ante.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 A magistrates' court having power to take a recognisance may, instead of taking it, fix the amount in which the principal and any sureties are to be bound: Magistrates' Courts Act 1980 s 119(1). The recognisance may then be taken before a justice of the peace, a justices' clerk, a justices' chief executive, a police officer who either is of the rank of inspector or above or is in charge of a police station or, if the person to be bound is in a prison or other place of detention, before the governor or keeper of the prison or place: Magistrates' Courts Rules 1981, SI 1981/552, r 86(1)(b) (amended by SI 2001/610). The recognisance so taken ranks as if entered into before the court which fixed the amount: see the Magistrates' Courts Act 1980 s 119(2). The person taking the recognisance must send it to the clerk of that court or, if the person committed has been committed to the Crown Court, to the appropriate officer of that court (see the Magistrates' Courts Rules 1981, SI 1981/552, r 86(4)), must post notice of it to the governor or keeper of the prison or place where the person in custody is detained and, in the case of a surety's recognisance, must give a copy of the notice to the surety (see r 87(b)). For forms of recognisance and notice see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Forms 118, 119, 122, 123, 129 (amended by SI 2001/615). If a proposed surety produces to the governor or keeper of the prison or other place of detention where the accused is detained a certificate signed by a justice or clerk of the court that he is acceptable as a surety, the governor or keeper must take his recognisance: see the Magistrates' Courts Rules 1981, SI 1981/552, r 86(3); Magistrates' Courts (Forms) Rules 1981, SI 1981/553, Sch 2 Form 128 (amended by SI 2001/615). See PARA 505 note 12 ante.

4 Under the Bail Act 1976 s 3(5) (as amended), s 3(6) (as amended), or s 3(6A) (as added): see PARA 718 ante.

5 For forms of certificate see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, Sch 2 Forms 126, 127 (amended by SI 2001/615).

6 Magistrates' Courts Rules 1981, SI 1981/552, r 86(2) (substituted by SI 1984/1552; and amended by SI 2001/610).

7 Magistrates' Courts Rules 1981, SI 1981/552, r 86(2) (as substituted: see note 6 supra).

8 Ibid r 87(a) (amended by SI 2001/610).

9 See the Magistrates' Courts Rules 1981, SI 1981/552, r 88(a), (b). In the case of bail otherwise than in criminal proceedings he must first take the recognisance of the person in custody if this has not already been done: r 88(b).

## **UPDATE**

### **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### **721 Release on bail**

NOTE 5--SI 1981/553 Sch 2 Forms 126, 127 revoked: SI 2003/1236.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(v) Adjournment and Remand/B. REMAND/722. Arrest of person unlikely to surrender.

## **722. Arrest of person unlikely to surrender.**

If a surety for a person who has been released on bail in criminal proceedings<sup>1</sup> notifies a constable in writing that that person is unlikely to surrender to custody<sup>2</sup> and that for that reason the surety wishes to be relived of his obligations as surety, the person concerned may be arrested without warrant by a constable<sup>3</sup>. Alternatively the surety may take him before a justice who may commit him, in default of finding fresh sureties, until he can be brought before the court<sup>4</sup>.

1 For the meaning of 'bail in criminal proceedings' see PARA 718 note 2 ante.

2 For the meaning of 'surrender to custody' see PARA 718 note 6 ante.

3 Bail Act 1976 s 7(3)(c). This power of arrest under s 7 is specifically preserved by the Police and Criminal Evidence Act 1984 s 26(2), Sch 2 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 927). As to the notification of bail decision after arrest while on bail see the Magistrates' Courts Rules 1981, SI 1981/552, r 92 (amended by SI 2001/610).

4 1 Burn's Justice of the Peace (1845 Edn) 330. In view of the modern statutory provision above this course is unlikely to be necessary today.

### **UPDATE**

#### **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(v) Adjournment and Remand/B. REMAND/723. Remand for medical examination.

## **723. Remand for medical examination.**

If on the trial<sup>1</sup> of an offence punishable on summary conviction with imprisonment a magistrates' court<sup>2</sup> is satisfied that the accused did the act or made the omission charged, but is of opinion that inquiry should be made into his physical and mental condition before the method of dealing with him is determined, the court must adjourn the case and remand the accused to enable a medical examination and report to be made<sup>3</sup>. The adjournment may not exceed three weeks at a time if the defendant is in custody or four weeks if he is on bail<sup>4</sup>. Where the accused is remanded on bail, the court must impose a condition<sup>5</sup> requiring him to make himself available for inquiries or a report to be made, and this requirement must be or must include requirements that he:

- 226 (1) undergo medical examination by a registered medical practitioner or, where the inquiry is into his mental condition and the court so directs, two such practitioners<sup>6</sup>; and

- 227 (2) for that purpose attend such an institution or place, or on such practitioner as the court directs and, where the inquiry is into his mental condition, comply with any other directions given to him for that purpose by any person specified by the court or by a person of any class so specified<sup>7</sup>.

Where a magistrates' court has convicted a person of an offence punishable on summary conviction with imprisonment or is satisfied that he did the act or made the omission charged or has given his consent<sup>8</sup>, the court may remand him to a hospital specified by the court for a report on his mental condition<sup>9</sup> if the court is:

- 228 (a) satisfied on the written or oral evidence of a registered medical practitioner that there is reason to suggest he is suffering from mental illness, psychopathic disorder, severe mental impairment or mental impairment<sup>10</sup>;
- 229 (b) of the opinion that it would be impracticable for a report to be made if he were remanded on bail<sup>11</sup>;
- 230 (c) satisfied by written or oral evidence of the medical practitioner who would be responsible for making the report or of a person representing the managers of the hospital where he would be treated that arrangements have been made for his admission within seven days of the remand<sup>12</sup>.

1 Exceptionally the court may obtain medical reports without embarking on a trial where those acting for the defendant consent: see *R v Lincolnshire (Kesteven) Justices, ex p O'Connor* [1983] 1 All ER 901, [1983] 1 WLR 335 (hospital order made).

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 Powers of Criminal Courts (Sentencing) Act 2000 s 11(1). The general right to bail exists (see the Bail Act 1976 s 4(1), (4)), except where the offence is imprisonable and it appears to the court that it would be impracticable to complete the inquiries or make the report without keeping the accused in custody (s 4(5), Sch 1 para 7). See further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1165 et seq. On exercising the power to remand under the Powers of Criminal Courts (Sentencing) Act 2000 s 11(1), the court must, where the accused is in custody, send to the institution or place to which he is committed and, where he is bailed, to the institution or place to which, or the person by whom, he is to be examined, a statement of the reasons why the inquiry was sought and of any information before the court as to his physical or mental condition: Magistrates' Courts Rules 1981, SI 1981/552, r 24; Powers of Criminal Courts (Sentencing) Act 2000 s 165, Sch 11 para 1(4); Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Form 34. See also Home Office Circulars 113/73, 1/75, 66/90. See PARA 505 note 12 ante.

4 Powers of Criminal Courts (Sentencing) Act 2000 s 11(2).

5 le under the Bail Act 1976 s 3(6)(d): see PARA 718 ante.

6 Powers of Criminal Courts (Sentencing) Act 2000 s 11(3)(a). Provision is made for the payment of costs to a registered medical practitioner who makes a report in writing or otherwise for this purpose: see the Criminal Justice Act 1967 s 32(2) (as amended); Prosecution of Offences Act 1985 s 19(3)(c) (as amended); Costs in Criminal Cases (General) Regulations 1986, SI 1986/1335, reg 25; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARAS 2076, 2085.

7 Powers of Criminal Courts (Sentencing) Act 2000 s 11(3)(b).

8 Mental Health Act 1983 s 35(2)(b). See further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1696; MENTAL HEALTH vol 30(2) (Reissue) PARA 489.

9 Ibid s 35(1).

10 Ibid s 35(3)(a).

11 Ibid s 35(3)(b).

12 See ibid s 35(4).

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(v) Adjournment and Remand/B. REMAND/724. Transfer of remand hearings.

#### 724. Transfer of remand hearings.

Where in criminal proceedings a magistrates' court<sup>1</sup> adjourns a case during the initial procedure for an accused to indicate his intention is to plea<sup>2</sup>, or during proceedings for determining the mode of trial of an offence triable either way<sup>3</sup>, or in committal proceedings<sup>4</sup> or on the trial of an information<sup>5</sup>, and remands the accused in custody, the court may, if he has attained the age of 17<sup>6</sup>, order that he be brought up for any subsequent remands before (or, where the court has power to further remand him without his being brought before the court<sup>7</sup>, may order that any applications for any subsequent remands be made to) an alternate magistrates' court nearer to the prison where he is to be confined on remand<sup>8</sup>. Where such an order is in force the alternate court has, to the exclusion of the remanding court, all the powers in relation to a further remand, whether in custody or on bail, and the grant of a right to representation funded by the Legal Services Commission<sup>9</sup> as part of the Criminal Defence Service<sup>10</sup> which that court would otherwise have had<sup>11</sup>. In remanding the accused in custody, the court may require him to be brought before (or, where the court has power to further remand him without his being brought before the court<sup>12</sup>, may require an application for a further remand to be made to) the court which made the order at the end of the period of remand or at such earlier time as that court may require and, if the alternate court does so or the accused is released on bail, the order ceases to be in force<sup>13</sup>.

In addition to the above power to remand to an alternate court, there is a general power for defendants to be cross-remanded between courts in the same county<sup>14</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 Ie under the Magistrates' Courts Act 1980 s 17C (as added): see PARA 708 ante.

3 Ie under ibid s 18(4) (as amended) (see PARA 709 ante). For the meaning of 'offence triable either way' see PARA 653 ante.

4 Ie under ibid s 5 (as amended): see PARA 710 ante.

5 Ie under ibid s 10(1): see PARA 707 ante. As to informations see PARA 681 ante.

6 As to a person's age see PARA 738 post.

7 Ie under the Magistrates' Courts Act 1980 s 128(3A) (as added and amended): see PARA 717 ante.

8 Ibid s 130(1) (amended by the Criminal Procedure and Investigations Act 1996 s 49(5)(b), (6)), Magistrates' Courts Act 1980 s 130(4A)(a) (s 130(4A) added by the Criminal Justice Act 1982 s 59, Sch 9 para 5). The amendment made by the Criminal Procedure and Investigations Act 1996 applies in relation to appearances before a magistrates' court on or after 1 October 1997, unless he has appeared or been brought before such a court in respect of the same offence on a previous occasion falling before that day: see the Criminal Procedure

and Investigations Act 1996 s 49(6), (7); and the Criminal Procedure and Investigations Act 1996 (Appointed Day No 6) Order 1997, SI 1997/2199. As to the documents which must be sent on the transfer of remand hearings see the Magistrates' Courts Rules 1981, SI 1981/552, r 25.

The Secretary of State considers that such transfers seem likely to provide positive advantages where bail is not likely to be granted, where several remands in custody are likely to be necessary and where transport to and from the prison is likely to involve a significant security risk or is particularly lengthy, or is in some other way inconvenient, but it is not the intention that the transfer should take place without the consent of the alternate court: Home Office Circular letter dated 10 July 1978.

The order must require the accused to be brought before (or, where the court is satisfied as mentioned in the Magistrates' Courts Act 1980 s 128(3A) (as added and amended) (power to further remand him without his being brought before the court) may require an application for a further remand to be made to) the alternate court at the end of the period of remand or at such earlier time as that court may require: s 130(2), (4A)(b) (as so added). The court, on making an order under s 130(1) (as amended), is not required at that time to fix the time and place of the resumed hearing, but must do so as soon as practicable after the order ceases to be in force: s 130(5), Sch 5 para 1. The restrictions on the reporting of committal proceedings imposed by s 8 (as amended), are applied as appropriate: see Sch 5 para 2. The remanding court must at once notify the terms of the order or remand to the court before which the accused is to be brought for the hearing of any application for a subsequent remand, or as the case may be, before which any such application is to be made without his being brought before it: Sch 5 para 3 (amended by the Criminal Justice Act 1982 Sch 9 para 7). A person subject to such an order must, if released on bail, be bailed to appear before the court which made the order: Magistrates' Courts Act 1980 Sch 5 para 4.

Section 130 (as amended) and Sch 5 (as amended) have effect notwithstanding anything in s 5 (as amended) (see PARA 710 ante), s 10 (as amended) (see PARAS 707, 711 ante) or s 18(4) (as amended) (see PARA 709 ante): Sch 5 para 5.

9 As to the Legal Services Commission see LEGAL AID vol 65 (2008) PARA 17 et seq.

10 As to the Criminal Defence Service see LEGAL AID vol 65 (2008) PARA 120 et seq.

11 Magistrates' Courts Act 1980 s 130(3) (amended by the Access to Justice Act 1999 s 24, Sch 4 paras 15, 18).

12 Ie where the court is satisfied as is mentioned in the Magistrates' Courts Act 1980 s 128(3A) (as added and amended): see PARA 717 ante.

13 Ibid s 130(4), (4A)(c) (as added: see note 8 supra).

14 *R v Avon Magistrates' Courts Committee, ex p Bath Law Society* [1988] QB 409, [1988] 2 WLR 137, DC.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(vi) Legal Representation/725. Legal representation.

## (vi) Legal Representation

### 725. Legal representation.

A party to any proceedings before a magistrates' court<sup>1</sup> may be represented by a legal representative<sup>2</sup>, and an absent party whose representative is present will be deemed not to be absent<sup>3</sup> unless his presence is expressly required by some enactment<sup>4</sup> or a condition of a recognisance<sup>5</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 Magistrates' Courts Act 1980 s 122(1) (amended by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 25). For the meaning of 'legal representative' see PARA 658 note 4 ante.

Where a solicitor is employed he must be duly qualified to act within the meaning of the Solicitors Act 1974 s 1: see s 15(2); and LEGAL PROFESSIONS vol 66 (2009) PARA 901. However, failure to comply with s 20 (as amended; prospectively further amended) (offence for unqualified person to act as solicitor) does not invalidate a committal for trial under what is now the Magistrates' Courts Act 1980 s 6(2) (as substituted): *R v Scott* [1978] LS Gaz R 716. A solicitor, if not authorised by the defendant, cannot bind the defendant by pleading guilty on his behalf, even where the defendant is a minor and he is authorised by the defendant's father: *R v Aves* (1871) 24 LT 64. An informant or complainant, whether a public officer or a private person, has a right to examine and cross-examine witnesses, even though he is not a barrister or solicitor: *Duncan v Toms* (1887) 56 LJMC 81, DC. The court has a discretion to allow any person who is not a barrister or solicitor to act as an advocate for either side: *O'Toole v Scott* [1965] AC 939, [1965] 2 All ER 240, PC (police officer); and see *R v Crown Court at Southwark, ex p Tawfick* (1994) Times, 1 December. The discretion is that of the court and is not a matter for the consent of the parties, and the discretion is to be exercised in each case individually and only in exceptional circumstances: *D v S (Rights of Audience)* [1997] 2 FCR 712, [1997] 1 FLR 724, CA; *Re Pelling (Rights of Audience)* [1997] 2 FLR 458. Unqualified representatives will not usually be heard: *Mercy v Persons Unknown* (1974) 231 Estates Gazette 1159, CA. Those representing children and parties in 'children' cases should be specially experienced in order that representation may be provided discreetly having regard to the overriding interests of the children: see *Re G (A Minor) (Rights of Audience)* [1997] 2 FCR 585; *D v S (Rights of Audience)* supra. Anyone may attend as a friend of either party, take notes and quietly give advice: *Collier v Hicks* (1831) 2 B & Ad 663 at 668 per Lord Tenterden CJ; approved in *McKenzie v McKenzie* [1971] P 33, [1970] 3 All ER 1034, CA.

A party to proceedings does not require the express permission of the court to have an adviser present as he is entitled to assistance if the court does not rule otherwise: *R v Leicester City Justices, ex p Barrow* [1991] 3 All ER 935, CA. The fact that in the court's view the proceedings are simple and straightforward does not justify the denial of assistance: *R v Highbury Corner Magistrates, ex p Watkins* [1992] RA 300. See also *R v Wolverhampton Magistrates' Court, ex p Mould* [1992] RA 309 (wrongful refusal of assistance to community charge debtor at committal proceedings).

3 Magistrates' Courts Act 1980 s 122(2). The court may not issue a warrant on the ground that a defendant should have appeared in person: *R v Thompson* [1909] 2 KB 614, DC. On appeal to the Crown Court an appellant who is represented by counsel need not appear in person: *R v Crown Court at Croydon, ex p Clair* [1986] 2 All ER 716, [1986] 1 WLR 746, DC.

4 As to the meaning of 'enactment' see PARA 505 note 16 ante. The following enactments expressly require the presence of a party: (1) Magistrates' Courts Act 1980 s 4(3) (as substituted) (see PARA 668 ante), which requires that evidence before examining justices be given in the presence of the accused; (2) the Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613, reg 47(2) (see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 339), which requires an inquiry prior to the commitment to prison of a defaulting council tax payer to be made in his presence; and (3) the Magistrates' Courts Act 1980 s 18(2) (see PARA 659 ante), which requires the procedure for determining the mode of trial of an offence triable either way to be conducted with the accused present in court except where he is legally represented and has consented to the proceedings being conducted in his absence and the court is satisfied that there is good reason for doing so (see s 23(1) (as amended); and PARA 662 ante). As to the use of the expression 'examining justices' see PARA 524 note 9 ante.

5 Ibid s 122(3) (amended by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 25).

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(vii) The Hearing/726. Substance of information or complaint.

## (vii) The Hearing

### 726. Substance of information or complaint.

If the accused appears on the summary trial of an information<sup>1</sup>, the magistrates' court<sup>2</sup> must state to him the substance of the information and ask him whether he pleads guilty or not guilty<sup>3</sup>. If he pleads guilty, the court may convict him without hearing evidence<sup>4</sup>. The court has a discretion to allow a change of plea at any time before sentence<sup>5</sup>, but not afterwards<sup>6</sup>.

On the hearing of a complaint<sup>7</sup>, the court must, if the defendant appears, state to him the substance of the complaint<sup>8</sup>.

1 As to informations see PARA 681 ante.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 Magistrates' Courts Act 1980 s 9(1). The question must be put to the defendant personally: *R v Wakefield Justices, ex p Butterworth* [1970] 1 All ER 1181, DC. Where the accused is not represented the court must explain the substance of the charge in simple language: see the Magistrates' Courts Rules 1981, SI 1981/552, r 13A (added by SI 1993/1183). A representative may enter a plea of guilty or not guilty on behalf of a corporation: Magistrates' Courts Act 1980 s 46, Sch 3 para 2(c). For the meaning of 'representative' see PARA 666 note 11 ante. A plea must be unambiguous: *R v Golathan* (1915) 84 LJB 758, CCA; *R v Ingleson* [1915] 1 KB 512, CCA; *R v Graham Campbell, ex p Ahmed Hamid Moussa* [1921] 2 KB 473, DC; *R v Emery* (1943) 29 Cr App Rep 47; *R v Field* (1943) 29 Cr App Rep 151; *R v Tottenham Justices, ex p Rubens, R v Middlesex Quarter Sessions, ex p Rubens* [1970] 1 All ER 879, [1970] 1 WLR 300, DC. See also *Leahy v Rawlinson* [1978] Crim LR 106 (material which comes to the attention of the court before sentence which raises suspicion that the defendant did not really intend to plead guilty renders the plea equivocal); *P Foster (Haulage) Ltd v Roberts* [1978] 2 All ER 751, 142 JP 447, DC (mistake of law does not necessarily make plea equivocal); *R v Bristol Justices, ex p Sawyers* (1988) Times, 23 June, DC (plea not necessarily equivocal where entered as a result of defendant's solicitors being mistaken as to his instructions). The Crown Court may entertain an appeal against conviction where an equivocal plea has been treated as a plea of guilty but must make proper enquiry before remitting the case: *R v Marylebone Justices, ex p Westminster City Council, R v Inner London Quarter Sessions, ex p Westminster City Council* [1971] 1 All ER 1025, 135 JP 239, DC; *R v Crown Court at Coventry, ex p Manson* (1978) 67 Cr App Rep 315, [1978] Crim LR 356, DC. Affidavit evidence of what occurred in the magistrates' court should be obtained from the chairman of the court or the clerk: *R v Rochdale Justices, ex p Allwork* [1981] 3 All ER 434, 73 Cr App Rep 319, DC; *R v Plymouth Justices, ex p Hart* [1986] QB 950, [1986] 2 All ER 452, DC. The Crown Court may treat a plea entered under duress as a nullity or an equivocal plea: *R v Crown Court at Huntingdon, ex p Jordan* [1981] QB 857, [1981] 2 All ER 872, DC. The plea must be entered in the register: Magistrates' Courts Rules 1981, SI 1981/552, r 66(4). As to the duty to keep the register see PARA 628 ante.

4 Magistrates' Courts Act 1980 s 9(3).

5 *S (An Infant) v Manchester City Recorder* [1971] AC 481, [1969] 3 All ER 1230, HL; *R v Durham Quarter Sessions, ex p Virgo* [1952] 2 QB 1, [1952] 1 All ER 466, DC. Cf *R v West Kent Quarter Sessions Appeal Committee, ex p Files* [1951] 2 All ER 728, DC. A change of plea should not be allowed for expediency, but only where justified by the interests of justice: *R v Uxbridge Justices, ex p Smith* [1977] RTR 93, DC. See *R v South Tameside Magistrates' Court, ex p Rowland* [1983] 3 All ER 689, 148 JP 202 (court entitled to refuse withdrawal of an unequivocal plea of guilty where proceedings adjourned for defendant to be legally represented as the court was contemplating custodial sentence); *R v Drew* [1985] 2 All ER 1061. See also *Beswick v R* [1987] 1 WLR 1346, PC (extent of discretion to allow change of plea to guilty where trial adjourned and change of plea made before a different court); *R v Eccles Justices, ex p Fitzpatrick* (1989) 153 JP 470, DC (magistrates should not inquire into reasons); *R v Stratford Youth Court, ex p Conde* [1997] 1 WLR 113, DC (where case remitted for sentence by first youth court to second youth court, second court has jurisdiction to accept change of plea).

Where the Crown Court or the magistrates' court has allowed a defendant to change his plea, the magistrates have a discretion to allow him to withdraw his consent to summary trial: *R v Southampton City Justices, ex p Briggs* [1972] 1 All ER 573, (1971) 136 JP 237, DC; *R v Craske, ex p Metropolitan Police Comr* [1957] 2 QB 591, [1957] 2 All ER 772; *R v West Bromwich Justices, ex p Pearson* [1981] Crim LR 709, DC.



6 *R v Campbell, ex p Hoy* [1953] 1 QB 585, [1953] 1 All ER 684, DC. For the procedure where a defendant wishes to change his plea on appeal against sentence see *R v Rochdale Justices, ex p Allwork* [1981] 3 All ER 434, DC; *R v Plymouth Justices, ex p Hart* [1986] QB 950, [1986] 2 All ER 452, DC.

7 As to complaints see PARA 681 ante.

8 Magistrates' Courts Act 1980 s 53(1). As to subsequent procedure see PARAS 728 et seq, 761 post. In the application of the Magistrates' Courts Act 1980 to civil contempt proceedings under s 63(3) (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq), where the proceedings are taken of the court's own motion, s 53(1) applies as if a complaint had been made against the person against whom the proceedings are taken: Contempt of Court Act 1981 s 17(2), Sch 3.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(vii) The Hearing/727. Prosecutor's duty to furnish information.

### 727. Prosecutor's duty to furnish information.

Rules<sup>1</sup> have been made<sup>2</sup> with respect to criminal proceedings requiring the prosecutor to serve a notice on a person accused of an offence triable either way informing him that he may request the prosecutor to furnish him with a copy of those parts of written statements which contain information as to the facts and matters of which the prosecutor proposes to adduce evidence or a summary of those facts or matters<sup>3</sup>. The prosecutor is not bound by such a request of disclosure of any fact or matter where he is of the opinion that disclosure of that fact or matter might lead to intimidation of the witness or interfere with the course of justice<sup>4</sup>. A magistrates' court<sup>5</sup> is required to adjourn the proceedings pending compliance with any such requirement unless satisfied that the conduct of the case for the accused will not be substantially prejudiced<sup>6</sup>. It is not open to a person convicted of an offence to appeal on the ground that any such requirement was not complied with by the prosecutor<sup>7</sup>.

In addition, in respect of proceedings where an accused has pleaded not guilty<sup>8</sup>, the prosecutor is under a duty to make primary disclosure of prosecution material which has not previously been disclosed to the accused and which in the prosecutor's opinion might undermine the case for the prosecution against the accused, or give him a written statement that there is no such material<sup>9</sup>.

1 See the Magistrates' Courts (Advance Information) Rules 1985, SI 1985/601; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1110. See also the Magistrates' Courts (Advance Notice of Expert Evidence) Rules 1997, SI 1997/705.

2 Ie under the Magistrates' Courts Act 1980 s 144 (as amended): see PARA 588 ante.

3 See the Criminal Law Act 1977 s 48(1)(a); Magistrates' Courts (Advance Information) Rules 1985, SI 1985/601, rr 3, 4 (r 4 amended by SI 1992/2072). The court is under a duty to satisfy itself that the accused is aware of the requirements which may be so imposed on the prosecutor: see the Magistrates' Courts (Advance Information) Rules 1985, SI 1985/601, r 6. See also *R v Bromley Magistrates, ex p Smith*; *R v Wells Street Magistrates' Court, ex p King* [1995] 4 All ER 146 (magistrates have jurisdiction to rule on disputed issues regarding the disclosure of documents in summary trials).

4 See the Magistrates' Courts (Advance Information) Rules 1985, SI 1985/601, r 5. The prosecutor is not obliged to disclose copies of allegedly pornographic material seized from the defendant: *R v Dunmow Justices, ex p North* (1993) 157 JP 1153, DC. In relation to proceedings for a sexual offence, access to material relating to a victim is restricted by the Sexual Offences (Protected Material) Act 1997 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1395 et seq).

5 For the meaning of 'magistrates' court' see PARA 583 ante.

6 See the Magistrates' Courts (Advance Information) Rules 1985, SI 1985/601, r 7(1). A decision by the court that a defendant's defence would not be substantially prejudiced by non compliance with the rules must be recorded in the register: see r 7(2).

7 Criminal Law Act 1977 s 48(3).

8 See the Criminal Procedure and Investigations Act 1996 s 1(1); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1386.

9 See *ibid* s 3(1); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1387.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(vii) The Hearing/728. Order of evidence and speeches.

### 728. Order of evidence and speeches.

The court must explain to an accused who is not legally represented the substance of the charge in simple language<sup>1</sup>. On the summary trial of an information, or the hearing of a complaint<sup>2</sup>, before a magistrates' court<sup>3</sup>, the prosecutor or complainant must call his evidence, and before doing so may address the court<sup>4</sup>. At the conclusion of this evidence the accused or defendant may address the court, whether or not he afterwards calls evidence<sup>5</sup>. If he calls evidence, the prosecutor or complainant may call evidence in rebuttal<sup>6</sup>. It is then open to the accused or defendant to address the court if he has not already done so<sup>7</sup>. Either party may with the leave of the court address the court a second time, but where the court grants leave to one party it may not refuse it to the other<sup>8</sup>. If a second address is made in criminal proceedings on information, the prosecutor must address the court before the accused<sup>9</sup>, but if on a complaint the defendant obtains leave to address the court a second time he must address the court before the complainant<sup>10</sup>.

1 Magistrates' Courts Rules 1981, SI 1981/552, r 13A(1) (r 13A added by SI 1993/1183).

2 As to informations and complaints see PARA 681 ante.

3 For the meaning of 'magistrates' court' see PARA 583 ante.

4 See the Magistrates' Courts Rules 1981, SI 1981/552, rr 13(1), 14(1). Counsel has the right to choose what witnesses to call and in what order: *Briscoe v Briscoe* [1968] P 501, [1966] 1 All ER 465, DC. Where the prosecutor is not legally represented, the court may allow the clerk to question the prosecution witnesses: *Simms v Moore* [1970] 2 QB 327, [1970] 3 All ER 1, DC; but see PARA 735 post. If an accused who is not legally

represented, instead of asking a witness in support of the charge questions by way of cross-examination, makes assertions, the court must then put to the witness such questions as it thinks necessary on behalf of the accused and may for this purpose question the accused in order to bring out or clear up any point arising out of such assertions: Magistrates' Courts Rules 1981, SI 1981/552, r 13A (as added: see note 1 supra). As to proof by formal admission see r 71 (amended by SI 1997/706).

The Police and Criminal Evidence Act 1984 s 78 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1365) does not entitle a defendant to have the issue of the admissibility of evidence determined by a 'trial within a trial' before that evidence is given: *Vel v Chief Constable of North Wales* (1987) 151 JP 510, DC. For guidelines on this matter see *SJF v Chief Constable of Kent, ex p Margate Juvenile Court* (1982) Times, 17 June, DC.

Justices should be informed of any relevant custody time limits where they have a number of trials which are ready to begin: *Re C* (2000) 164 JP 693, DC.

5 Magistrates' Courts Rules 1981, SI 1981/552, r 13(2) (amended by SI 1983/523), Magistrates' Courts Rules 1981, SI 1981/552, r 14(2). When an accused intends to call two or more witnesses as to fact and one of those witnesses is the accused, he must be called before the other witnesses unless the court otherwise directs: Police and Criminal Evidence Act 1984 s 79. See further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1314.

6 Magistrates' Courts Rules 1981, SI 1981/552, rr 13(3), 14(3). As to rebutting evidence see CIVIL PROCEDURE vol 11 (2009) PARA 774.

7 Ibid rr 13(4), 14(4) (r 13(4) amended by SI 1983/523).

8 Magistrates' Courts Rules 1981, SI 1981/552, rr 13(5), 14(5). In a matrimonial case the court should be slow to refuse leave to a complainant who applies to make a second speech: *Mayes v Mayes* [1971] 2 All ER 397, [1971] 1 WLR 679, DC. Where the defence raises a point of law it seems that, regardless of the right of reply, the complainant should be allowed to reply to it: see *Marjoram v Marjoram* [1955] 2 All ER 1 at 7, [1955] 1 WLR 520 at 525, DC, per Lord Merriman P. As to closing the case of the prosecution and defence and as to reply see further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(32) (2006 Reissue) PARAS 1312, 1317.

9 Magistrates' Courts Rules 1981, SI 1981/552, r 13(6).

10 Ibid r 14(6).

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(vii) The Hearing/729. Hearsay evidence.

### 729. Hearsay evidence.

In criminal proceedings hearsay evidence is in general (subject to certain specific exceptions) not admissible when it is tendered to prove the truth of the facts asserted<sup>1</sup>.

A party who desires to give hearsay evidence<sup>2</sup> at the hearing of civil proceedings in a magistrates' court<sup>3</sup> must, not less than 21 days before the date fixed for the hearing<sup>4</sup>, serve a hearsay notice<sup>5</sup> on every other party and file a copy in the court by serving it on the justices' chief executive<sup>6</sup>. A hearsay notice must:

231 (1) state that it is a hearsay notice<sup>7</sup>;

232 (2) identify the proceedings in which the hearsay evidence is to be given<sup>8</sup>;

- 233 (3) state that the party proposes to adduce hearsay evidence<sup>9</sup>;
- 234 (4) identify the hearsay evidence<sup>10</sup>;
- 235 (5) identify the person who made the statement which is to be given in evidence<sup>11</sup>; and
- 236 (6) state why that person will not be called to give oral evidence<sup>12</sup>.

Where a party tenders as hearsay evidence a statement made by a person but does not propose to call the person who made the statement to give evidence, the court may, on application, allow another party to call and cross-examine the person who made the statement on its contents<sup>13</sup>. Such an application must: (a) be served on the justices' chief executive with sufficient copies for all other parties<sup>14</sup>; (b) unless the court otherwise directs, be made not later than seven days after service of the hearsay notice<sup>15</sup>; and (c) give reasons why the person who made the statement should be cross-examined on its contents<sup>16</sup>. On receipt of an application, the justices' clerk must: (i) unless the court otherwise directs, allow sufficient time for the applicant to comply with the prescribed requirements<sup>17</sup> and fix the date, time and place of the hearing<sup>18</sup>; and (ii) indorse the date, time and place of the hearing on the copies of the application filed by the applicant and return the copies to the applicant immediately<sup>19</sup>. The court must notify all parties of its decision on an application to call a witness for cross-examination on hearsay evidence<sup>20</sup>.

If a party tenders as hearsay evidence a statement made by a person but does not call the person who made the statement to give oral evidence, and another party wishes to attack the credibility of the person who made the statement or allege that the person who made the statement made any other statement inconsistent with it, that the other party must notify the party tendering the hearsay evidence of his intention<sup>21</sup>. If, on receipt of such a notice, the party tendering the hearsay evidence calls the person who made the statement to be tendered as hearsay evidence to give oral evidence, he must, unless the court otherwise directs, notify the court and all other parties of his intention<sup>22</sup>.

Where service of a document is required by the provisions described above<sup>23</sup> it may be effected, unless the contrary is indicated, if the person to be served is not known by the person serving to be acting by solicitor, by delivering it to him personally, or by delivering at, or sending it by first-class post<sup>24</sup> to, his residence or his last known residence<sup>25</sup>. If the person to be served is known by the person serving to be acting by solicitor, service may be effected by (A) delivering it at, or sending it by first-class post to, the solicitor's address for service<sup>26</sup>; (B) where the solicitor's address for service includes a numbered box at a document exchange, by leaving the document at that document exchange or at a document exchange which transmits documents on every business day<sup>27</sup> to that document exchange<sup>28</sup>; or (C) by sending a legible copy of the document by facsimile transmission to the solicitor's office<sup>29</sup>.

1 As to the restrictions on hearsay evidence in criminal proceedings see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1519 et seq.

2 I.e. evidence consisting of hearsay within the meaning of the Civil Evidence Act 1995 s 1(2): Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999, SI 1999/681, r 2(2). See further CIVIL PROCEDURE vol 11 (2009) PARA 808 et seq.

3 Ibid r 2(3).

4 The court or the justices' clerk may make a direction substituting a different period of time for the service of the hearsay notice on the application of a party to the proceedings: *ibid* r 3(2). The court may make such a direction of its own motion: r 3(3).

5 I.e. a notice under the Civil Evidence Act 1995 s 2 (see CIVIL PROCEDURE vol 11 (2009) PARA 811 et seq): Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999, SI 1999/681, r 2(2). A single hearsay notice may deal with the hearsay evidence of more than one witness: r 3(5).

6 Ibid r 3(1) (amended by SI 2001/615). As to the justices' chief executive see PARA 624 et seq ante.

7 Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999, SI 1999/681, r 3(4)(a).

8 Ibid r 3(4)(b).

9 Ibid r 3(4)(c).

10 Ibid r 3(4)(d).

11 Ibid r 3(4)(e).

12 Ibid r 3(4)(f).

13 Ibid r 4(1). The court may hear such an application ex parte if it considers it is in the interests of justice to do so: r 4(6). Subject to r 4(5), (6) (see note 19 infra), where an application is made under r 4(1), the applicant must file with the court a statement at or before the hearing of the application that service of a copy of the application has been effected on all other parties and indicating the manner, date, time and address at which the document was served: r 4(7).

14 Ibid r 4(2)(a) (amended by SI 2001/615).

15 Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999, SI 1999/681, r 4(2)(b).

16 Ibid r 4(2)(c).

17 Ie the requirements of ibid r 4(4) (as amended): see note 19 infra.

18 Ibid r 4(3)(a) (r 4(3) substituted by SI 2001/615).

19 Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999, SI 1999/681, r 4(3)(b) (as substituted: see note 18 supra). Subject to r 4(5), (6) (see note 13 supra), on receipt of the copies from the justices' clerk the applicant must serve a copy on every other party giving not less than three days' notice of the hearing of the application: r 4(4). The court or the justices' clerk may give directions as to the manner in which the service under r 4(4) is to be effected and may, subject to the justices' chief executive giving notice to the applicant, alter or dispense with the notice requirement under r 4(4) if the court or justices' clerk, as the case may be, considers it is in the interests of justice to do so: r 4(5) (amended by SI 2001/615).

20 Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999, SI 1999/681, r 4(8).

21 Ibid r 5(1). Unless the court or justices' clerk otherwise directs, such a notice must be given not later than seven days after service of the hearsay notice and must be served on every other party and a copy filed in the court: r 5(2).

22 Ibid r 5(3). Unless the court or the justices' clerk otherwise directs, such a notice must be given not later than seven days after service of the notice under r 5(1) (see the text to note 21 supra): r 5(4).

23 Ie by the Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999, SI 1999/681 (as amended).

24 Ie first-class post which has been pre-paid or in respect of which pre-payment is not required: ibid r 6(2). Unless the contrary is proved, a document is deemed to have been served, in the case of service by first-class post, on the second business day after posting: r 6(3)(a).

25 Ibid r 6(1)(a).

26 Ibid r 6(1)(b)(i).

27 'Business day' means any day other than a Saturday, Sunday, Christmas Day or Good Friday, or a bank holiday under the Banking and Financial Dealings Act 1971 (see TIME vol 97 (2010) PARA 321), in England and Wales: Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999, SI 1999/681, r 6(4).

28 Ibid r 6(1)(b)(ii). Unless the contrary is proved, a document is deemed to have been served in accordance with r 6(1)(b)(ii) on the second business day after the day on which it is left at the document exchange: r 6(3)(b).

29 Ibid r 6(1)(b)(iii). Where, in accordance with r 6(1)(b)(iii), a document is transmitted on a business day before 4 pm, unless the contrary is proved, it is deemed to have been served on that day and, in any other case, on the next business day: r 6(3)(c).

**UPDATE****681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

**729 Hearsay evidence**

TEXT AND NOTE 6--For 'justices' chief executive' read 'designated officer': SI 1999/681 r 3(1) (further amended by SI 2005/617).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(vii) The Hearing/730. Determining whether there is a case to answer.

**730. Determining whether there is a case to answer.**

At the close of the prosecution in a criminal case, it is the duty of the court to determine whether there is a case to answer<sup>1</sup>, whether upon a submission from the defence or not<sup>2</sup>. The information must be dismissed when there is no evidence to prove an essential element in the alleged offence or when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict<sup>3</sup>. Where justices wish to dismiss a complaint<sup>4</sup> at the end of the complainant's case, they must first invite him or his representative to address the court<sup>5</sup>.

In a criminal case, there is no question of putting a man to his election whether to give or call evidence after a submission of no case<sup>6</sup>.

Any objection to a prosecution on the ground that any necessary consent to its institution<sup>7</sup> has not been obtained should be taken before the prosecution closes its case, otherwise the justices should proceed on the assumption that consent has been obtained<sup>8</sup>.

1 *R v Burdett* (1820) 4 B & Ald 95; *Mayes v Mayes* [1971] 2 All ER 397, [1971] 1 WLR 679, DC. It would seem that the concept of 'no case to answer' is not applicable to family proceedings and in particular proceedings under the Children Act 1989 (see CHILDREN AND YOUNG PERSONS): See *Re S and P (Discharge of Care Order)* [1995] 2 FLR 782, sub nom *P v Bradford Metropolitan Borough Council* [1996] 2 FCR 227. As to family proceedings see PARA 739 et seq post.

2 Where a magistrates' court is provisionally minded to dismiss an information prior to the start of the defence case, if any, either of its own motion or upon hearing a defence submission to that effect, it should not so rule without first calling upon the prosecution to address the court: *R v Barking and Dagenham Justices, ex p DPP* (1994) 159 JP 373, [1995] Crim LR 953.

3 *Practice Note* [1962] 1 All ER 448, [1962] 1 WLR 227, DC. Apart from these two situations, a tribunal should not in general be called on to reach a decision as to conviction or acquittal until the whole of the evidence which either side wishes to tender has been placed before it, but if a submission is made that there is no case to answer the decision should depend not so much on whether the adjudicating tribunal, if compelled to do so, would at that stage convict or acquit, but on whether the evidence is such that a reasonable tribunal might convict; and if a reasonable tribunal might convict on the evidence so far laid before it, there is a case to answer: *Practice Note* supra. The clerk should draw this Practice Note to the attention of the presiding justice: *Stoneley v Coleman* [1974] Crim LR 254, DC.

4 As to complaints see PARA 681 ante.

5 *Mayes v Mayes* [1971] 2 All ER 397, [1971] 1 WLR 679, DC.

6 *Jones v Metcalf* [1967] 3 All ER 205, [1967] 1 WLR 1286, DC.

7 As to consents necessary to prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1071-1072.

8 *Price v Humphries* [1958] 2 QB 353 at 359, [1958] 2 All ER 725 at 728, DC, where Lord Goddard CJ indicated that there is a distinction between objections going to the merits of a case and those going only to procedure, and stated that where the objection goes to the merits the justices should be very careful about allowing the case to be reopened where the prosecution has failed to prove something, but that they should not allow an objection to procedure where that has been held back to the last moment. See also *Hammond v Wilkinson* [2001] Crim LR 323, DC (proof of statutory instrument); *Cook v DPP* [2001] Crim LR 321, DC (absence of pro forma evidence in intoximeter case not challenged until after prosecution case cleared).

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### 730 Determining whether there is a case to answer

NOTE 1--Notwithstanding the coming into force of the Human Rights Act 1998, there is no requirement for justices to provide reasons for rejecting a submission of no case to answer made after hearing the prosecution evidence: *Moran v DPP* [2002] EWHC 89 (Admin), (2002) 166 JP 467.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(vii) The Hearing/731. Onus of proof of statutory exception, etc.

### 731. Onus of proof of statutory exception, etc.

Where the defendant to an information or complaint<sup>1</sup> relies for his defence on any exception, exemption, proviso, excuse or qualification<sup>2</sup>, whether or not it accompanies the description of the offence or matter of complaint in the enactment creating the offence or on which the complaint is founded, the burden of proving the exception, exemption, proviso, excuse or qualification is on him, and this notwithstanding that the information or complaint contains an allegation negating the exception, exemption, proviso, excuse or qualification<sup>3</sup>. The standard of proof is on the balance of probabilities<sup>4</sup>.

1 As to informations and complaints see PARA 681 ante.

2 It is not necessary to specify or negative such an exception, exemption, proviso, excuse or qualification in an information or complaint: see the Magistrates' Courts Rules 1981, SI 1981/552, r 4(3).

3 Magistrates' Courts Act 1980 s 101. In the application of the Magistrates' Courts Act 1980 to civil contempt proceedings under s 63(3) (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq), where the proceedings are taken of the court's own motion, s 101 applies as if a complaint had been made against the person against whom the proceedings are taken: Contempt of Court Act 1981 s 17(2), Sch 3. See *R v Edwards* [1975] QB 27, [1974] 2 All ER 1085, CA; *Buckman v Button* [1943] KB 405, [1943] 2 All ER 82,

DC; *John v Humphreys* [1955] 1 All ER 793, [1955] 1 WLR 325, DC; *Baker v Sweet* [1966] Crim LR 51, DC; *Davey v Towle* [1973] RTR 328, DC.

See also *R v Lambert* [2001] UKHL 37, HL (whether statutory provisions imposing burden of proof on defendant compatible with human rights).

4 *Islington London Borough v Panico* [1973] 3 All ER 485, [1973] 1 WLR 1166, DC. As to the standard of proof in civil proceedings see further CIVIL PROCEDURE vol 11 (2009) PARA 775.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### 731 Onus of proof of statutory exception, etc

NOTE 2--SI 1981/552 r 4(3) replaced by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'), r 7.2.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(vii) The Hearing/732. Defence of prior acquittal or conviction.

### 732. Defence of prior acquittal or conviction.

The rule on indictment<sup>1</sup> that it is a complete defence to a charge that a defendant has previously been acquitted or convicted of the same offence, the pleas of *autrefois acquit* and *autrefois convict*, has a parallel in summary trial arising from the common law rule against double punishment<sup>2</sup>, but if on the previous occasion the information was dismissed merely upon a point of form, and not adjudicated upon, the plea will not avail<sup>3</sup>.

1 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1269 et seq. The test is whether the offence of which the accused has been acquitted (or convicted) and that with which he is charged are the same in the sense that each must have the same essential ingredients: *Connelly v DPP* [1964] AC 1254, [1964] 2 All ER 401, HL; *United States Government v Atkinson* [1969] 2 All ER 1151, DC (on appeal on another point sub nom *Atkinson v United States Government* [1971] AC 197, [1969] 3 All ER 1317, HL).

2 See *Wemyss v Hopkins* (1875) LR 10 QB 378 at 381 per Blackburn J. See also *Welton v Tanebourne* (1908) 99 LT 668, DC; *Flatman v Light* [1946] KB 414, [1946] 2 All ER 368, DC. Justices who in error commit a defendant for trial for offences only punishable summarily have not exhausted their jurisdiction and are not precluded from subsequently adjudicating: *Bannister v Clarke* [1920] 3 KB 598, DC. For the plea to be effectual, the conviction must be a legal conviction, not vitiated by irregularity in the proceedings: *R v Marsham, ex p Pethick Lawrence* [1912] 2 KB 362, DC. A conviction for an offence punishable summarily as, for example, common assault, is a bar to proceedings upon indictment for one on the same facts as, for instance, wounding with intent to maim or do grievous bodily harm: *R v Walker* (1843) 2 Mood & R 446; *R v Miles* (1890) 24 QBD 423, CCR. See also the Offences against the Person Act 1861 s 45 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1275. However, if after a summary conviction the defendant's act results in further consequences calling for a more serious charge, the summary conviction is no bar to such a charge: *R v Morris* (1867) LR 1 CCR 90; *R v Friel* (1890) 17 Cox CC 325; *R v Tonks* [1916] 1 KB 443, CCA.

If an information is dismissed by a magistrates' court because the justices are equally divided, the dismissal is a bar to a fresh information on the same facts: *Kinnis v Graves* (1898) 67 LJQB 583, DC. A withdrawal of a summons owing to a defect which would have made a conviction liable to be quashed is not a dismissal which can be pleaded in bar of subsequent proceedings: *Davis v Morton* [1913] 2 KB 479, DC. Where a summons



under the Sale of Food and Drugs Act 1899 was dismissed because the required certificate of analysis had not been served, a plea of autrefois acquit to a second summons in respect of the same alleged offence was good (*Haynes v Davis* [1915] 1 KB 332, DC); but where a similarly irregular summons was adjourned, and a second summons issued, justices had jurisdiction to determine the second while the first was still pending, and a plea of autrefois acquit was unavailing (*Williams v Letheren* [1919] 2 KB 262, DC). An adjudication, whether or not there was a trial on the merits, is binding and the matter cannot be prosecuted again: *R v Pressick* [1978] Crim LR 377. However, the accused must have been put in peril of a conviction, and to be in peril he must have formally been required to plead to the charge (*Williams v DPP* [1991] 3 All ER 651, [1991] 1 WLR 1160, DC), but the mere fact that the defendant may have pleaded not guilty will not amount to an adjudication on the merits and will not of itself amount to circumstances where it can be said he has been put in peril of conviction (*Islington London Borough Council v Michaelides* [2001] EWHC 468, DC).

See also *Cooper v New Forest District Council* [1992] Crim LR 877, DC (power of Crown Court to consider a plea in but notwithstanding that the appellant has already pleaded guilty).

3 *R v Ridgway* (1822) 1 Dow & Ry KB 132; *R v Harrington* (1864) 28 JP 485. Where an information was laid by a person not entitled to lay it and dismissed, it was held no bar to an information subsequently laid by a qualified person: *Foster v Hull* (1869) 20 LT 482, DC. See also *R v Willesden Magistrates' Court, ex p Clemmings* (1987) 152 JP 286, DC (dismissal of information on prosecution's failure to supply advance information did not preclude subsequent reinstatement of proceedings); *Williams v DPP* [1991] 3 All ER 651. In cases where the original charge has been so clearly incorrectly framed that the defendant was never in jeopardy of being convicted, the substitution of one charge for another, regarded as more appropriate to the facts, does not give rise to the doctrine of double jeopardy: *R v Dabhade* [1993] QB 329, [1992] 4 All ER 796, CA.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(vii) The Hearing/733. Evidence of spent convictions not admissible.

### 733. Evidence of spent convictions not admissible.

In general, notwithstanding the provisions of any Act or rule of law, no evidence of matters relating to a spent conviction is admissible in any proceedings before a judicial authority, and a person may not be asked questions in those proceedings which are answerable only by reference to a spent conviction<sup>1</sup>. However, this does not affect the determination of any issue, or prevent the admission or requirement of any evidence, relating to a person's previous convictions or to circumstances ancillary to them in criminal proceedings, including any appeal or reference in a criminal matter<sup>2</sup>.

1 See the Rehabilitation of Offenders Act 1974 s 4; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1510 et seq. As to the meaning of 'spent conviction' see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2109.

2 See *ibid* s 7(2)(a); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1515.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(vii) The Hearing/734. Securing attendance of witness.

### **734. Securing attendance of witness.**

Where a justice of the peace for any commission area<sup>1</sup> is satisfied that any person in England or Wales is likely to be able to give material evidence, or produce any document or thing likely to be material evidence, at the summary trial of an information or hearing of a complaint<sup>2</sup> by a magistrates' court<sup>3</sup> for that commission area or certain proceedings before licensing justices<sup>4</sup>, and that that person will not voluntarily attend as a witness or produce the document or thing, the justice must issue a witness summons<sup>5</sup>. The justice must inquire into the nature of the evidence and whether it is material<sup>6</sup>. If he is satisfied by evidence on oath of the matters mentioned above<sup>7</sup>, and also that it is probable that a summons would not procure the attendance of the person in question, the justice may instead of issuing a summons issue a warrant to arrest that person and bring him before such a court at a time and place specified in the warrant, but a warrant must not be issued where the attendance is required for the hearing of a complaint<sup>8</sup>. A justice may refuse to issue a summons in relation to the summary trial of an information if he is not satisfied that the application for the summons was made as soon as reasonably practicable after the accused pleaded not guilty<sup>9</sup>. Witnesses may be summoned to give written evidence or to produce a document or other exhibit in committal proceedings where they will not voluntarily make the statement or produce the document or other exhibit<sup>10</sup>. A summons may be issued if the justice is satisfied that the person in question is outside the British Islands<sup>11</sup> but no warrant can be issued unless the justice is satisfied by evidence on oath that the person in question is in England or Wales<sup>12</sup>. A witness summons may be set aside by the High Court or by the magistrates' court where there has been an abuse of process of the court or it is clear that the witness cannot give relevant evidence<sup>13</sup>.

If a witness summons is disobeyed, the attendance or production may be secured by a warrant which the court may issue if satisfied by evidence on oath that the person is likely to be able to give, or to produce a document or thing likely to be, material evidence<sup>14</sup>, if it is proved that he has been duly served with the summons and that a reasonable sum has been paid or tendered to him for his costs and expenses<sup>15</sup>, and if it appears to the court that there is no just excuse for the failure<sup>16</sup>. The warrant is a warrant to arrest the person and bring him before the court at a specified time and place<sup>17</sup>. A warrant may be executed in Scotland, Northern Ireland<sup>18</sup>, the Isle of Man or the Channel Islands<sup>19</sup>.

1 As to commission areas see PARA 507 ante.

2 In the application of the Magistrates' Courts Act 1980 to civil contempt proceedings under s 63(3) (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq), where the proceedings are taken of the court's own motion, s 97(1) (as amended) (see the text to notes 3-5 infra) applies as if a complaint had been made against the person against whom the proceedings are taken: Contempt of Court Act 1981 s 17(2), Sch 3. As to complaints see PARA 681 ante.

3 For the meaning of 'magistrates' court' see PARA 583 ante.

4 Certain proceedings under the Licensing Act 1964 are treated as the hearing of a complaint for the purposes of the Magistrates' Courts Act 1980 s 97 (as amended): see the Licensing Act 1964 s 196A (as added and amended).

The provisions of the Magistrates' Courts Act 1980 s 97(1), (3), (4) (as amended) now apply in relation to licensing justices and to an application for an occasional permission as if they were a magistrates' court for the petty sessions area constituting the licensing district and as if the application were a complaint: see the Licensing (Occasional Permissions) Act 1983 s 2(7).

5 Magistrates' Courts Act 1980 s 97(1) (amended by the Criminal Procedure and Investigations Act 1996 ss 47, 80, Sch 1 para 7, Sch 5; the Local Government Changes for England (Magistrates' Courts) Regulations 1996, SI 1996/674, reg 2, Schedule para 2(4); and the Magistrates' Courts (Wales) (Consequences of Local Government Changes) Order 1996, SI 1996/675, art 2, Schedule para 2(4)). The amendment made by the Criminal Procedure and Investigations Act 1996 applies in relation to any alleged offence into which no criminal investigation has begun before 1 April 1997: see the Criminal Procedure and Investigations Act 1996 (Appointed Day No 6) Order 1997, SI 1997/2199. An application for the issue of a summons or warrant under the Magistrates' Courts Act 1980 s 97 (as amended) may be made by the applicant in person or by his counsel or solicitor: Magistrates' Courts Rules 1981, SI 1981/552, r 107(1) (amended by SI 1997/706; and SI 2000/3361). An application for the issue of such a summons may be made by delivering or sending the application in writing to the justices' chief executive for the magistrates' court: Magistrates' Courts Rules 1981, SI 1981/552, r 107(2) (amended by SI 1983/523; and SI 2001/610). The summons is directed to the witness and requires him to attend court at the time and place appointed to give evidence or produce the document or thing: Magistrates' Courts Act 1980 s 97(1); Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Form 136 (amended by SI 1997/707). See PARA 505 note 12 ante.

A witness summons may be served on a person other than a corporation by delivering it to the witness (Magistrates' Courts Rules 1981, SI 1981/552, r 99(1)(a)) or by leaving it for him with some person at his last known or usual place of abode (r 99(1)(b)), but not by posting it to him (r 99(6)(a)). A witness summons may be served on a corporation in the same manner as any other summons: see r 99(3); and PARA 666 note 3 ante.

6 *R v Peterborough Justices, ex p Willis and Amos* (1987) 151 JP 785, DC; *R v Reading Justices, ex p Berkshire County Council* [1996] 1 Cr App Rep 239, [1996] 1 FLR 149, DC. See also *R v Marylebone Magistrates' Court, ex p Gatting and Emburey* (1990) 154 JP 549 (the evidence of the witness summoned must be material to the party seeking the summons); *R v Bournemouth Justices, ex p Grey*, *R v Bournemouth Justices, ex p Rodd* [1987] 1 FLR 36; *R v Derby Magistrates' Court, ex p B* [1995] 4 All ER 526, HL (the Magistrates' Courts Act 1980 s 97 (as amended) cannot be used to require production of the proofs of evidence of a prosecution witness where the witness has not waived legal professional privilege).

As to whether a witness order should be issued in respect of a child see *R v Highbury Corner Magistrates' Court, ex p Deering* (1996) 161 JP 138, DC (applying the Children and Young Persons Act 1933 s 44(1) (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1232)).

7 In the matters mentioned in the Magistrates' Courts Act 1980 s 97(1) (as amended): see the text and notes 1-5 supra.

8 Ibid s 97(2). In relation to the summary trial of an information, s 97(2) has effect as if the reference to the matters mentioned in s 97(1) included a reference to the matter mentioned in s 97(2B) (as added) (see the text to note 9 infra): s 97(2C) (s 97(2B), (2C) added by the Criminal Procedure and Investigations Act 1996 s 51). The amendment made by the Criminal Procedure and Investigations Act 1996 applies in relation to any proceedings for the purpose of which no summons has been issued under the Magistrates' Courts Act 1980 s 97(1) (as amended), and no warrant has been issued under s 97(2) (as amended), before 1 April 1997: see the Criminal Procedure and Investigations Act 1996 s 51(2), (3); and the Criminal Procedure and Investigations Act 1996 (Appointed Day No 3) Order 1997, SI 1997/682.

9 See the Magistrates' Courts Act 1980 s 97(2B) (as added: see note 8 supra).

10 See ibid s 97A (added by the Criminal Procedure and Investigations Act 1996 Sch 1 para 8). The amendment made by the Criminal Procedure and Investigations Act 1996 applies in relation to any alleged offence into which no criminal investigation has begun before 1 April 1997: see the Criminal Procedure and Investigations Act 1996 (Appointed Day No 6) Order 1997, SI 1997/2199.

11 For the meaning of 'British Islands' see PARA 675 note 9 ante.

12 Magistrates' Courts Act 1980 s 97(2A) (added by the Criminal Justice (International Co-operation) Act 1990 s 31(1), Sch 4 para 2).

13 *R v Hove Justices, ex p Donne* [1967] 2 All ER 1253n, DC; *R v Lewes Justices, ex p Gaming Board for Great Britain* [1972] 1 QB 232, [1971] 2 All ER 1126, DC (affd on another point sub nom *Rogers v Home Secretary* [1973] AC 388, [1972] 2 All ER 1057, HL); *R v Cheltenham Justices, ex p Secretary of State for Trade* [1977] 1 All ER 460, [1977] 1 WLR 95, DC; *R v Greenwich Juvenile Court, ex p Greenwich London Borough Council* (1977) Fam Law 171, (1977) 76 LGR 99, DC; *R v Coventry Magistrates' Court, ex p Perks* [1985] RTR 74, DC; *R v Peterborough Magistrates' Court, ex p Willis and Amos* (1987) 151 JP 785, DC (followed in *R v Reading Justices*,

*ex p Berkshire County Council* [1996] 1 Cr App Rep 239, DC); *R v Tower Bridge Magistrates' Court, ex p DPP* (1988) 152 JP 523, DC (application for witness summons dismissed as being purely a 'fishing expedition').

14 Magistrates' Courts Act 1980 s 97(3)(a).

15 *Ibid* s 97(3)(b). This may be proved on oath or by statutory declaration or by certificate: see the Magistrates' Courts Rules 1981, SI 1981/552, r 67.

16 Magistrates' Courts Act 1980 s 97(3)(c). For the circumstances where it is appropriate to issue a warrant see *R v Bradford Justices, ex p Wilkinson* [1990] 2 All ER 833, [1990] 1 WLR 692, DC; *R v Bristol Magistrates' Court, ex p Rowles* [1994] RTR 40, DC. See also *R v Nottingham Justices, ex p Fraser* (1995) 159 JP 612, DC (irrelevant consideration that defendant was represented by solicitor and that his case would be adequately presented to the court).

17 Magistrates' Courts Act 1980 s 97(3); Magistrates' Courts (Forms) Rules 1981, SI 1981/553, Sch 2 Form 137 (amended by SI 1997/707).

18 See the Criminal Justice and Public Order Act 1994 s 136 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 921.

19 See the Indictable Offences Act 1848 s 13 (as amended) (applied by the Magistrates' Courts Act 1980 s 126 (as amended) (except in relation to a warrant to arrest a witness in affiliation proceedings (now repealed): s 126 proviso); and PARA 527 ante.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### 734 Securing attendance of witness

TEXT AND NOTES 1-5--Replaced. Where a justice of the peace is satisfied that any person in England or Wales is likely to be able to give material evidence, or produce any document or thing likely to be material evidence, at the summary trial of an information or hearing of a complaint or of an application under the Adoption and Children Act 2002 (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 323 et seq) by a magistrates' court, and it is in the interests of justice to issue a summons under this provision to secure the attendance of that person to give evidence or produce the document or thing, the justice must issue a summons directed to that person requiring him to attend before the court at the time and place appointed in the summons to give evidence or to produce the document or thing: 1980 Act s 97(1) (substituted by the Serious Organised Crime and Police Act 2005 s 169(2); and amended by the Family Procedure (Modification of Enactments) Order 2005, SI 2005/3275).

NOTES 5, 17--SI 1981/553 Sch 2 Forms 136, 137 revoked: SI 2003/1236.

TEXT AND NOTE 8--1980 Act s 97(2) amended: SI 2005/3275.

TEXT AND NOTE 10--1980 Act s 97A amended: Courts Act 2003 Sch 8 para 231(2), Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(vii) The Hearing/735. Examination of witnesses.

### 735. Examination of witnesses.

Subject to the provisions of any enactment<sup>1</sup> or rule of law authorising the reception of unsworn evidence<sup>2</sup>, the evidence given before a magistrates' court<sup>3</sup> must be given on oath<sup>4</sup> or affirmation<sup>5</sup>. The magistrates are entitled to make use of their general local knowledge<sup>6</sup>, but not their knowledge of the facts which obtained on a particular occasion<sup>7</sup> nor their private knowledge of the parties in previous proceedings<sup>8</sup>. When justices propose to view the scene of an offence they should be accompanied by the parties or their representatives<sup>9</sup>. When travelling to and from the site of the view the magistrates should not travel with the prosecutor<sup>10</sup>. A magistrates' court in a criminal case has the same power as a High Court judge to call or examine witnesses, or to allow or disallow questions put to a witness by or on behalf of the parties<sup>11</sup>, but in general neither the court nor the justices' clerk may take an active part in the proceedings except to clear up ambiguities in the evidence<sup>12</sup>.

1 As to the meaning of 'enactment' see PARA 505 note 16 ante.

2 There are many statutory provisions authorising the reception of a certificate or other document as evidence. The commonest examples are written statements before examining justices under the Magistrates' Courts Act 1980 s 6 (as amended) (see PARA 676 ante), and proof by written statements under the Criminal Justice Act 1967 s 9 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1535). See also the provisions of the Criminal Justice Act 1988 Pt II (ss 23-28) (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1522) relating to the reception of documentary evidence in criminal proceedings. Unsworn evidence may be received as to the non-payment of sums adjudged to be paid (see the Magistrates' Courts Act 1980 s 99 (as amended); and PARA 829 post), and the payment of wages (see s 100 (as amended); and PARA 864 post). As to the use of the expression 'examining justices' see PARA 524 note 9 ante.

3 For the meaning of 'magistrates' court' see PARA 583 ante.

4 Magistrates' Courts Act 1980 s 98. For the form of oath see the Oaths Act 1978 s 1(1); and CIVIL PROCEDURE vol 11 (2009) PARA 1021. The evidence of a child under 14 years in a criminal case must be given unsworn: see the Criminal Justice Act 1988 s 33A (as added and amended; prospectively repealed); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1277. Where by inadvertence a witness is not sworn, the proceedings may be treated as a nullity and begun afresh: *R v Marsham, ex p Pethick Lawrence* [1912] 2 KB 362, DC.

5 See the Oaths Act 1978 s 5. For the form of affirmation see s 6. See further CIVIL PROCEDURE vol 11 (2009) PARA 1023.

6 *Clift v Long* [1961] Crim LR 121, DC; *Borthwick v Vickers* [1973] RTR 390, DC.

7 *Williams v Boyle* (1962) 106 Sol Jo 939, DC.

8 *Thomas v Thomas* [1961] 1 All ER 19, [1961] 1 WLR 1, DC.

9 *Parry v Boyle* (1986) 83 Cr App Rep 310, [1986] Crim LR 551, DC.

10 *R v Ely Justices, ex p Burgess* (1992) 157 JP 484, [1992] Crim LR 888, DC.

11 Cf *Coulson v Disborough* [1894] 2 QB 316, CA. As to the right of justices to call witnesses after the defence case is closed see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1316. See also CIVIL PROCEDURE vol 11 (2009) PARA 1046.

12 *Simms v Moore* [1970] 2 QB 327, [1970] 3 All ER 1, DC, where Lord Parker CJ laid down guidelines for the examination of witnesses by the clerk. See also *Practice Note (Magistrates: Clerk and Authorised Legal Advisor)* [2000] 4 All ER 895, [2000] 1 WLR 1886; and PARA 728 note 4 ante.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(vii) The Hearing/736. Witness refusing to give evidence.

### **736. Witness refusing to give evidence.**

A person attending or brought before a magistrates' court<sup>1</sup> who refuses without just excuse to be sworn or give evidence, or to produce any document or thing, may be committed<sup>2</sup> to custody for a time specified in the warrant not exceeding one month, or until he sooner consents to give evidence or produce the document or thing, or a fine<sup>3</sup> may be imposed upon him, or both<sup>4</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 For a form of warrant of commitment see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Form 139 (amended by SI 1997/707). See PARA 505 note 12 ante.

3 The fine must not exceed £2,500: Magistrates' Courts Act 1980 s 97(4) (amended by the Contempt of Court Act 1981 ss 13, 14, Sch 2 para 7; and the Criminal Justice Act 1991 s 17(3), Sch 4 Pt I). This amount may be altered by ministerial order: Magistrates' Courts Act 1980 s 143, Sch 6A (added by the Criminal Justice Act 1982 s 48, Sch 5; and substituted by the Criminal Justice Act 1991 Sch 4 Pt IV).

A fine imposed under the Magistrates' Courts Act 1980 s 97(4) is deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction: s 97(5) (added by the Criminal Justice Act 1991 Sch 4 Pt V; and substituted by the Criminal Justice Act 1993 s 65(3), (4), Sch 3 para 6(3)).

4 Magistrates' Courts Act 1980 s 97(4) (as amended: see note 3 supra).

## **UPDATE**

### **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### **736 Witness refusing to give evidence**

NOTE 2--SI 1981/553 Sch 2 Form 139 revoked: SI 2003/1236.

NOTE 3--Magistrates' Courts Act 1980 Sch 6A amended: Criminal Justice and Immigration Act 2008 Sch 4 paras 24, 103 (Sch 4 para 24 partly in force: SI 2009/3074).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(vii) The Hearing/737. Deposition of child or young person.

### **737. Deposition of child or young person.**

A child or young person in respect of whom any of certain offences<sup>1</sup> has been committed may make a deposition on oath out of court where a magistrates' court<sup>2</sup> is satisfied by the evidence of a duly qualified medical practitioner that the attendance before the court of the child or young person would involve serious danger to his life or health<sup>3</sup>.

1     Is an offence mentioned in the Children and Young Persons Act 1933 s 42, Sch 1 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1164.

2     For the meaning of 'magistrates' court' see PARA 583 ante.

3     See the Children and Young Persons Act 1933 s 42(1). As to the receipt of the unsworn evidence of a child under 14 years see PARA 735 note 4 ante.

### **UPDATE**

#### **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(vii) The Hearing/738. Age of person.

### **738. Age of person.**

Where the age<sup>1</sup> of any person at any time is material for the purposes of any provision of the Magistrates' Courts Act 1980 regulating the powers of a magistrates' court<sup>2</sup>, his age at the material time is deemed to be or to have been that which appears to the court after considering any available evidence<sup>3</sup> to be or to have been his age at that time<sup>4</sup>. For the purposes of any provision of the Powers of Criminal Courts (Sentencing) Act 2000 which requires the determination of the age of a person by the court or the Secretary of State<sup>5</sup>, his age is deemed to be that which it appears to the court or, as the case may be, the Secretary of State to be after considering any available evidence<sup>6</sup>.

1     A person attains a particular age expressed in years at the commencement of the relevant anniversary of the date of his birth: see the Family Law Reform Act 1969 s 9; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 2.

2     For the meaning of 'magistrates' court' see PARA 583 ante.

3     Where a person admits his age and the justices conclude that he is telling the truth, there is no need to hear formal evidence: *R v Grimsby Recorder, ex p Purser* [1951] 2 All ER 889, DC.

4     Magistrates' Courts Act 1980 s 150(4).

5     As to the Secretary of State see PARA 530 note 8 ante.

### **UPDATE**

### **UPDATE**

## 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(viii) Family Proceedings/739. Meaning of 'family proceedings'.

### (viii) Family Proceedings

#### 739. Meaning of 'family proceedings'.

In the Magistrates' Courts Act 1980, 'family proceedings' means proceedings under a wide range of enactments<sup>1</sup> relating to<sup>2</sup>:

- 237 (1) the reciprocal enforcement of maintenance orders<sup>3</sup>;
- 238 (2) the recovery of the cost of providing assistance from persons liable for maintenance<sup>4</sup>;
- 239 (3) consent to the marriage of a person under 18<sup>5</sup>;
- 240 (4) the alteration of maintenance agreements by the court during the lives of the parties<sup>6</sup>;
- 241 (5) adoption proceedings<sup>7</sup>;
- 242 (6) matrimonial proceedings in magistrates' courts, including proceedings relating to financial provision for the parties to the marriage and the children of the family<sup>8</sup>;
- 243 (7) the revocation and variation of orders for periodical payments<sup>9</sup>;
- 244 (8) the recognition and enforcement of maintenance orders<sup>10</sup>;
- 245 (9) declarations of parentage<sup>11</sup>;
- 246 (10) private law proceedings relating to the welfare of a child, public law proceedings for the care and protection of a child and proceedings relating to the regulation of children's homes, also proceedings relating to financial provision for a child including the enforcement of contribution orders where a child is in care<sup>12</sup>;
- 247 (11) the recovery of expenditure on income support<sup>13</sup>;
- 248 (12) resolving issues of parentage for the purpose of child support<sup>14</sup>;
- 249 (13) proceedings in magistrates' courts in respect of family homes and domestic violence<sup>15</sup>;
- 250 (14) child safety orders placing children under the supervision of a social worker or a member of a youth offending team and requiring compliance with requirements specified by the court<sup>16</sup>.

However, family proceedings do not include proceedings:

- 251 (a) for the enforcement of any order made, confirmed or registered under any of those enactments<sup>17</sup>;
- 252 (b) for the variation of any provision for the periodical payment of money contained in an order made, confirmed or registered under any of those enactments<sup>18</sup>; or
- 253 (c) on an information in respect of the commission of an offence under any of those enactments<sup>19</sup>.



Nevertheless the court before which any of certain enforcement proceedings<sup>20</sup> fall to be heard may if it thinks fit order them, and any other proceedings being heard with them, to be treated as family proceedings<sup>21</sup>. No appeal lies from the making of, or the refusal to make, such an order<sup>22</sup>.

Where the same parties are parties to proceedings which are family proceedings<sup>23</sup> and to proceedings which the court has power to treat as family proceedings<sup>24</sup>, and the proceedings are heard together by a magistrates' court, the whole of the proceedings are to be treated<sup>25</sup> as family proceedings<sup>26</sup>.

1 As to the meaning of 'enactment' see PARA 505 note 16 ante.

2 Magistrates' Courts Act 1980 s 65(1) (amended by the Children Act 1989 s 92, Sch 11 para 8). The Magistrates' Courts Act 1980 s 65(1) (as amended) includes proceedings under the Supplementary Benefits Act 1976 s 18 (repealed) in the definition of family proceedings: see the Magistrates' Courts Act 1980 s 65(1)(i) (amended by the Family Law Reform Act 1987 s 33(4), Sch 4).

3 Magistrates' Courts Act 1980 s 65(1)(a), (f). The enactments in question are the Maintenance Orders (Facilities for Enforcement) Act 1920, and the Maintenance Orders (Reciprocal Enforcement) Act 1972 Pt I (ss 1-24) (as amended): see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 292 et seq.

4 Magistrates' Courts Act 1980 s 65(1)(b) (amended by the Family Law Reform Act 1987 s 33(4), Sch 4). The enactment in question is the National Assistance Act 1948 s 43 (as amended).

5 Magistrates' Courts Act 1980 s 65(1)(c). The enactment in question is the Marriage Act 1949 s 3 (as amended): see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 46.

6 Magistrates' Courts Act 1980 s 65(1)(ee) (added by the Matrimonial and Family Proceedings Act 1984 s 44). The enactment in question is the Matrimonial Causes Act 1973 s 35 (as amended): see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 703.

7 Magistrates' Courts Act 1980, s 65(1)(h). The enactment in question is the Adoption Act 1976 (except s 34 (now repealed)): see CHILDREN AND YOUNG PERSONS.

8 Magistrates' Courts Act 1980 s 65(1)(j). The enactment in question is the Domestic Proceedings and Magistrates' Courts Act 1978 Pt I (ss 1-35) (as amended).

9 Magistrates' Courts Act 1980 s 65(1)(l). The enactment in question is s 60 (as substituted and amended): see PARA 823 post.

10 Ibid s 65(1)(m) (added by the Civil Jurisdiction and Judgments Act 1982 s 15(4), Sch 12 Pt I), Magistrates' Courts Act 1980 s 65(1)(r) (added by the Civil Jurisdiction and Judgments Order 2001, SI 2001/3929, art 5, Sch 3 paras 10, 11(a)). The enactments in question are the Civil Jurisdiction and Judgments Act 1982 Pt I (ss 1-15) (as amended) (see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 65 et seq), and EC Council Regulation 44/2001 (OJ L12, 16.1.2001, pp 1-23) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, so far as they relate to the recognition or enforcement of maintenance orders. For the meaning of 'maintenance order' see PARA 820 note 3 post.

11 Magistrates' Courts Act 1980 s 65(1)(mm) (added by the Child Support, Pensions and Social Security Act 2000 s 83(5), Sch 8 para 2). The enactment in question is the Family Law Act 1986 s 55A (as added): see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 121.

12 Magistrates' Courts Act 1980 s 65(1)(n) (added by the Children Act 1989 s 92, Sch 11 para 8). The enactment in question is the Children Act 1989 (see CHILDREN AND YOUNG PERSONS). As to whether an application for a secure accommodation order was to be regarded as 'family proceedings' see *J R v Oxfordshire County Council* [1992] 2 FCR 310. For the allocation of specified proceedings concerning children between the High Court, county courts and magistrates' courts see PARA 740 post.

13 Magistrates' Courts Act 1980 s 65(1)(n) (added by the Social Security (Consequential Provisions) Act 1992 s 4, Sch 2 para 60). The enactment in question is the Social Security Administration Act 1992 s 106: see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 398.

14 Magistrates' Courts Act 1980 s 65(1)(o) (added by the Maintenance Orders (Backdating) Order 1993, SI 1993/623, art 3, Sch 2 para 1; and amended by the Child Support, Pensions and Social Security Act 2000 s 85,

Sch 9 Pt IX). The enactment in question is the Child Support Act 1991 s 20 (as substituted; prospectively further substituted) (so far as it provides, by virtue of an order under s 45 (as amended), for appeals to be made to a court), and s 27 (as substituted).

15 Magistrates' Courts Act 1980 s 65(1)(p) (added by the Family Law Act 1996 s 66(1), Sch 8 para 49). The enactment in question is the Family Law Act 1996 Pt IV (ss 30-63) (as amended): see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 285 et seq.

16 Magistrates' Courts Act 1980 s 65(1)(q) (added by the Crime and Disorder Act 1998 s 119, Sch 8 para 42). The enactment in question is the Crime and Disorder Act 1998 ss 11, 12: see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 625.

17 Magistrates' Courts Act 1980 s 65(1)(i).

18 Ibid s 65(1)(ii).

19 Ibid s 65(1)(iii).

20 Ie proceedings:

- 65 (1) under any enactment, for the enforcement of any order made, confirmed or registered under any of the enactments specified in ibid s 65(1)(a)-(k), (m), (n), (p), (r) (as amended) (see the relevant provisions in heads (1)-(14) in the text) (Magistrates' Courts Act 1980 s 65(2)(a) (amended by the Family Law Act 1996 (Modifications of Enactments) Order 1997, SI 1997/1898, art 2; and the Civil Jurisdiction and Judgments Order 2001, SI 2001/3929, art 5, Sch 3 paras 10, 11(b))).
- 66 (2) under any enactment, for the variation of any provision for the making of periodical payments contained in an order made, confirmed or registered under any of those enactments (Magistrates' Courts Act 1980 s 65(2)(b));
- 67 (3) for an attachment of earnings order to secure maintenance payments within the meaning of the Attachment of Earnings Act 1971 s 25(1) (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 627 et seq) or for the discharge or variation of such an order (Magistrates' Courts Act 1980 s 65(2)(c));
- 68 (4) for the enforcement of a maintenance order which is registered in a magistrates' court under the Maintenance Orders Act 1950 Pt II (ss 16-25) (as amended) (see CONFLICT OF LAWS vol 8(3) (Reissue) PARAS 292-300), or the Maintenance Orders Act 1958 Pt I (ss 1-5) (as amended) (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 664 et seq), or for the variation of the rate of payments specified by such an order (Magistrates' Courts Act 1980 s 65(2)(d)).
- 69 (5) under the Child Support Act 1991 s 20 (as substituted; prospectively further substituted) (appeals to tribunals), so far as it provides, by virtue of an order under s 45 (as amended), for appeals to be made to a court (Magistrates' Courts Act 1980 s 65(2)(e)).

For the meaning of 'magistrates' court' see PARA 583 ante.

21 Ibid s 65(2).

22 Ibid s 65(4).

23 Ie by virtue of ibid s 65(1) (as amended): see the text and notes 1-19 supra.

24 Ie by virtue of ibid s 65(2) (as amended): see the text and notes 20-21 supra.

25 Ie for the purposes of the Magistrates' Courts Act 1980.

26 Ibid s 65(3).

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### **739 Meaning of 'family proceedings'**

NOTES 1-20--See *Practice Direction (appeals) (guidance relating to application of supplementary provisions to Family Proceedings Rules 1991, SI 1991/2347)* [2009] 1 WLR 1103, [2009] All ER (D) 126 (Apr).

TEXT AND NOTES 1-16--Head (2) omitted (1980 Act s 65(1)(b) repealed by Health and Social Care Act 2008 Sch 15 Pt 5). Also, heads (15) the jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility (the enactment in question is EC Council Regulation 2201/2003) (1980 Act s 65(1)(s) (added by SI 2005/265)); (16) parental orders in favour of gamete donors (the enactment in question is the Human Fertilisation and Embryology Act 2008 s 54) (1980 Act s 65(1)(na) (added by Courts Act 2003 Sch 8 para 214; substituted by Human Fertilisation and Embryology Act 2008 Sch 6 para 20)); (17) consent to the civil partnership of a person under the age of 18 (the enactment in question is the Civil Partnership Act 2004 Sch 2) (1980 Act s 65(1)(ca) (added by 2004 Act Sch 27 para 65(2)); (18) the alteration of a maintenance agreement during the lives of the parties to a civil partnership (the enactment in question is Sch 5 paras 69-72) (1980 Act s 65(1)(ef) (added by 2004 Act Sch 27 para 65(3)); (19) financial relief in connection with a civil partnership (the enactment in question is the 2004 Act Sch 6) (1980 Act s 65(1)(ja) (added by 2004 Act Sch 27 para 65(4)); (20) protection of children in an emergency and power of constable to assist in exercise of powers of entry (the enactment in question is the Childcare Act 2006 ss 72, 79) (1980 Act s 65(1)(nza) (added by 2006 Act Sch 2 para 2)).

NOTE 10--The reference is now to judgments in civil and commercial matters, as applied by the Agreement made on 19 October 2005 between the European Community and the Kingdom of Denmark: 1980 Act s 65(1)(r) (amended by SI 2007/1655).

NOTE 21--See *Practice Direction (enforcement of contact orders) (magistrates' court)* [2009] 1 FLR 371, [2008] All ER (D) 75 (Nov); and *Practice Direction (written reasons in proceedings related to family proceedings)* [2009] 1 WLR 1109, [2009] All ER (D) 127 (Apr).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(viii) Family Proceedings/740. Procedure in general.

### **740. Procedure in general.**

Family proceedings<sup>1</sup> under certain enactments<sup>2</sup> are commenced by application, follow specific procedures prescribed by rules of court<sup>3</sup> and are subject to provisions for the allocation of specified proceedings concerning children between the High Court, county courts and magistrates' courts<sup>4</sup>. Otherwise, the hearing by a family proceedings court of a complaint<sup>5</sup> in family proceedings generally follows the same procedure as the hearing of a complaint in other proceedings<sup>6</sup>. In both cases there are special provisions relating to the constitution of the court<sup>7</sup>, restricting the classes of persons permitted to be present<sup>8</sup>, restricting the extent to which the proceedings may be reported<sup>9</sup>, requiring consideration of the possibility of reconciliation<sup>10</sup>, modifying the rules of evidence<sup>11</sup>, and requiring reasons for the decision to be recorded<sup>12</sup>.

1 For the meaning of 'family proceedings' see PARA 739 ante.

2 The enactments are: the Maintenance Orders (Facilities for Enforcement) Act 1920; the Maintenance Orders (Reciprocal Enforcement) Act 1972; the Adoption Act 1976; the Domestic Proceedings and Magistrates' Courts Act 1978; the Children Act 1989; the Human Fertilization and Embryology Act 1990 s 30; the Child Support Act 1991 s 20 (as substituted; prospectively further substituted), s 27 (as substituted); the Family Law Act 1996 Pt IV (ss 30-63) (as amended); the Crime and Disorder Act 1998 ss 11, 12. See further CHILDREN AND YOUNG PERSONS; CONFLICT OF LAWS; MATRIMONIAL AND CIVIL PARTNERSHIP LAW.

3 See the Maintenance Orders (Facilities for Enforcement) Rules 1922, SR & O 1922/1355 (amended by SI 1970/762; SI 1989/384; SI 1992/457; SI 1993/617; SI 2000/1875; and SI 2001/615); the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) Rules 1974, SI 1974/668 (amended by SI 1975/2236; SI 1979/170; SI 1983/1148; SI 1986/1962; SI 1992/457; SI 1993/617; and SI 2001/615); the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Republic of Ireland) Rules 1975, SI 1975/286 (amended by SI 1992/457; SI 1993/617; and SI 2001/615); the Magistrates' Courts (Recovery Abroad of Maintenance) Rules 1975, SI 1975/488 (amended by SI 1980/1584; SI 1993/617; and SI 2001/615); the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Hague Convention Countries) Rules 1980, SI 1980/108 (amended by SI 1986/1962; SI 1992/457; SI 1993/617; SI 1999/2002; and SI 2001/615); the Magistrates' Courts (Adoption) Rules 1984, SI 1984/611 (amended by SI 1989/384; SI 1991/1991; SI 1992/709; SI 2001/615; and SI 2001/820); the Family Proceedings Courts (Children Act 1989) Rules 1991, SI 1991/1395 (amended by SI 1991/1991; SI 1992/2068; SI 1993/627; SI 1994/809; SI 1994/2166; SI 1994/3156; SI 1997/1895; SI 2001/615; and SI 2001/818); the Family Proceedings Courts (Matrimonial Proceedings etc) Rules 1991, SI 1991/1991 (amended by SI 1992/2068; SI 1992/2071; SI 1993/627; SI 1994/809; SI 1997/1894; SI 2001/615; and SI 2001/778); the Family Proceedings Court (Child Support Act 1991) Rules 1993, SI 1993/627 (amended by SI 2001/615; and SI 2001/778); and the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (United States of America) Order 1995, SI 1995/2802.

4 Proceedings under the following provisions must be commenced in a magistrates' court: (1) the Children Act 1989 s 25 (as amended) (use of accommodation for restricting liberty); (2) s 31 (as amended) (care and supervision orders); (3) s 33(7) (leave to change name of, or remove from United Kingdom, child in care); (4) s 34 (parental control); (5) s 36 (as amended) (education supervision orders); (6) s 43 (child assessment orders); (7) s 44 (emergency protection orders); (8) s 45 (as amended) (duration of emergency protection orders etc); (9) s 46(7) (application for emergency protection order by police officer); (10) s 48 (powers to assist discovery of children etc); (11) s 50 (recovery orders); (12) s 75 (repealed in relation to England) (protection of children in an emergency); (13) s 77(6) (repealed in relation to England) (appeal against steps taken under s 77(1) (repealed in relation to England)); (14) s 102 (prospectively amended) (powers of constable to assist etc); (15) Sch 2 para 19 (approval of arrangements to assist child to live abroad); (16) Sch 2 para 23 (contribution orders); (17) Sch 8 para 8 (certain appeals); (18) the Adoption Act 1976 s 21 (as substituted) (transfer of parental rights and duties between adoption agencies); (19) s 20 (as substituted; prospectively further substituted) (appeals) where the proceedings are to be dealt with in accordance with the Child Support Appeals (Jurisdiction of Courts) Order 1993, SI 1993/961; (20) Human Fertilisation and Embryology Act 1990 s 30 (parental orders in favour of gamete donors): Children (Allocation of Proceedings) Order 1991, SI 1991/1677, art 3(1) (amended by SI 1993/624; SI 1994/2164; SI 2001/775). However, proceedings referred to in heads (2), (5)-(7), (9) or (10) supra and which arise out of an investigation directed by the High Court or a county court under the Children Act 1989 s 37(1), must be commenced in the court which directs the investigation, where that court is the High Court or a care centre, or in such care centre as the court which directs the investigation may order: Children (Allocation of Proceedings) Order 1991, SI 1991/1677, art 3(2). Notwithstanding art 3(1), (2), proceedings referred to in heads (1)-(11), (14) or (15) supra must be commenced in a court in which other proceedings in respect of the same child are pending, which are also of a kind set out in those heads: art 3(3) (amended by SI 1993/624). See further CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 209 et seq.

Proceedings under the Children Act 1989 or the Adoption Act 1976 to extend, vary or discharge an order, or the determination of which may have the effect of varying or discharging an order must be commenced in the court which made the order: Children (Allocation of Proceedings) Order 1991, SI 1991/1677, art 4(1) (amended by SI 1993/624). However, an application for an order under the Children Act 1989 s 8 (as amended; prospectively further amended) which would have the effect of varying or discharging an order made by a county court under s 10(1)(b), must be made to a divorce county court (Children (Allocation of Proceedings) Order 1991, SI 1991/1677, art 4(2)); and an application to extend, vary or discharge an order made by a county court under the Children Act 1989 s 38, or for an order which would have the effect of extending, varying or discharging such an order, must be made to a care centre (Children (Allocation of Proceedings) Order 1991, SI 1991/1677, art 4(3)). A court may transfer proceedings commenced in accordance with art 4(1) to any other court in accordance with arts 5-13 (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 212 et seq); art 4(4) (amended by SI 1993/624).

The Children (Allocation of Proceedings) Order 1991, SI 1991/1677, provides for the allocation of specified proceedings concerning children between the High Court, county courts and magistrates' courts. It also regulates transfers between different courts and categories of court. See further CHILDREN AND YOUNG PERSONS vol

5(3) (2008 Reissue) PARA 212 et seq. Appeals against orders by district judges transferring proceedings to a magistrates' court in accordance with the Children (Allocation of Proceedings) Order 1991, SI 1991/1677, are made under the Children (Allocation of Proceedings) (Appeals) Order 1991, SI 1991/1801 (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 304).

5 As to complaints see PARA 681 ante.

6 See PARA 726 et seq ante.

7 See PARA 603 et seq ante.

8 See PARA 741 post.

9 See PARA 742 post.

10 See PARA 744 post.

11 See PARA 745 post.

12 See PARA 763 post.

## **UPDATE**

### **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### **740 Procedure in general**

NOTE 3--SR & O 1922/1355 further amended: SI 2005/617. SI 1974/668 further amended: SI 2002/1734, SI 2005/617. SI 1975/286, SI 1975/488, SI 1980/108, SI 1991/1395 all further amended: SI 2005/617. SI 1984/611 revoked: SI 2005/2804. SI 1991/1395 further amended: SI 2007/2188, SI 2009/637, SI 2009/2025. SI 1991/1991 further amended: SI 2005/617, SI 2009/2025. SI 1993/627 further amended: SI 2005/617, SI 2005/1977, SI 2007/2188, SI 2008/2858, SI 2009/858. SI 1995/2802 amended: SI 2007/2267.

NOTE 4--SI 1991/1677, SI 1991/1801 replaced by Allocation and Transfer of Proceedings Order 2008, SI 2008/2836, sets out the proceedings that must be commenced in a magistrates' court (art 5(1)) and those that must be so commenced subject to certain exceptions (art 5(2)-(4)). Proceedings that must be commenced in the court where related proceedings are pending are specified: art 8. Provision is also made for the allocation of proceedings between the High Court, county courts and magistrates' courts (arts 5-8), commencing proceedings in specified classes of county court (arts 9-11), the transfer of proceedings between courts (arts 12-24), applications following refusals to transfer proceedings from magistrates' courts to county courts (art 25), and appeals against transfers of proceedings to magistrates' courts by county courts (art 26). See further CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 211A.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(viii) Family Proceedings/741. Restrictions on persons attending family proceedings courts.

### **741. Restrictions on persons attending family proceedings courts.**

In the case of family proceedings<sup>1</sup> in a magistrates' court<sup>2</sup>, no person may be present during the hearing and determination by the court of the proceedings except<sup>3</sup>:

- 254 (1) officers of the court<sup>4</sup>;
- 255 (2) parties to the case before the court, their legal representatives, witnesses and other persons directly concerned in the case<sup>5</sup>;
- 256 (3) representatives of newspapers or news agencies<sup>6</sup>;
- 257 (4) any other person whom the court may in its discretion permit to be present, so, however, that permission is not to be withheld from a person who appears to the court to have adequate grounds for attendance<sup>7</sup>.

If when hearing such proceedings the court thinks it necessary in the interests of the administration of justice or of public decency, it may direct that any persons other than officers of the court, parties and their legal representatives or other persons directly concerned in the case be excluded during the taking of any indecent evidence<sup>8</sup>. Further, the court may exercise its general power to direct that witnesses be excluded until they are called for examination<sup>9</sup>.

These powers are in addition and without prejudice to any other powers of the court to hear proceedings in private<sup>10</sup>.

1 For the meaning of 'family proceedings' see PARA 739 ante.

2 For the meaning of 'magistrates' court see PARA 583 ante.

3 Magistrates' Courts Act 1980 s 69(2) (amended by the Children Act 1989 s 92, Sch 11 para 8).

4 Magistrates' Courts Act 1980 s 69(2)(a).

5 Ibid s 69(2)(b) (amended by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 25).

6 Magistrates' Courts Act 1980 s 69(2)(c). This exception does not apply to family proceedings under the Adoption Act 1976: Magistrates' Courts Act 1980 s 69(3) (amended by the Children Act 1989 Sch 11 para 8).

7 Magistrates' Courts Act 1980 s 69(2)(d). This exception does not apply to family proceedings under the Adoption Act 1976: Magistrates' Courts Act 1980 s 69(3) (as amended: see note 6 supra)

8 Ibid s 69(4) (amended by the Children Act 1989 Sch 11 para 8; and the Courts and Legal Services Act 1990 Sch 18 para 25).

9 Magistrates' Courts Act 1980 s 69(6). See also *Tomlinson v Tomlinson* [1980] 1 All ER 593, [1980] 1 WLR 322.

10 Magistrates' Courts Act 1980 s 69(5). See also the Children and Young Persons Act 1933 s 37 (prospectively amended) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1281), s 47(2) (as amended) (persons present during sittings in youth courts) (see PARA 748 ante). It has been held that a power to hear proceedings in camera arises where justice would otherwise manifestly be defeated: *Scott v Scott* [1913] AC 417, HL.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(viii) Family Proceedings/742. Newspaper reports of family proceedings.

## **742. Newspaper reports of family proceedings.**

In the case of family proceedings<sup>1</sup> in a magistrates' court<sup>2</sup>, other than proceedings under the Adoption Act 1976, it is unlawful<sup>3</sup>:

- 258 (1) for the proprietor, editor or publisher of a newspaper or periodical<sup>4</sup> to print or publish or procure to be printed or published, in a newspaper or periodical<sup>5</sup>; or
- 259 (2) for any body corporate which provides the service in which the programme is included and to any person having functions in relation to the programme corresponding to those of an editor of a newspaper<sup>6</sup>, to include, or cause or procure to be included, in a programme included in a programme service<sup>7</sup> for reception in Great Britain<sup>8</sup>,

any particulars of family proceedings in a magistrates' court other than<sup>9</sup>: (a) the names, addresses and occupations of the parties and witnesses<sup>10</sup>; (b) the grounds of the application, and a concise statement of the charges, defences and counter-charges in support of which evidence has been given<sup>11</sup>; (c) submissions on any point of law arising in the course of the proceedings and the decision of the court on the submissions<sup>12</sup>; and (d) the decision of the court, and any observations made by the court in giving it<sup>13</sup>.

In the case of family proceedings in a magistrates' court under the Adoption Act 1976, it is unlawful:

- 260 (i) for the proprietor, editor or publisher of a newspaper or periodical to print or publish or procure to be printed or published, in a newspaper or periodical<sup>14</sup>; or
- 261 (ii) for any body corporate which provides the service in which the programme is included and to any person having functions in relation to the programme corresponding to those of an editor of a newspaper, to include, or cause or procure to be included, in a programme included in a programme service for reception in Great Britain<sup>15</sup>,

any particulars of the proceedings, including (A) the name, address or school of the child<sup>16</sup>; (B) any picture as being, or including, a picture of the child<sup>17</sup>; and (c) any other particulars calculated to lead to the identification of the child<sup>18</sup>, other than submissions on any point of law arising in the course of the proceedings and the decision of the court on the submissions<sup>19</sup>, and the decision of the court, and any observations made by the court in giving it<sup>20</sup>.

Nothing in the provisions described above<sup>21</sup> prohibits the printing or publishing of any matter in a newspaper or periodical of a technical character bona fide intended for circulation among members of the legal or medical professions<sup>22</sup>. Any person acting in contravention of those provisions is liable on summary conviction to a fine<sup>23</sup>. No prosecution for such an offence may be begun without the consent of the Attorney General<sup>24</sup>.

1 For the meaning of 'family proceedings' see PARA 739 ante.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 Magistrates' Courts Act 1980 s 71(1) (substituted by the Broadcasting Act 1990 s 203(1), Sch 20 para 29(2); and amended by the Children Act 1989 s 92, Sch 11 para 8).

4 Magistrates' Courts Act 1980 s 71(1B)(a) (s 71(1A), (1B) added by the Broadcasting Act 1990 s 203(1), Sch 20 para 29(2)).

5 Magistrates' Courts Act 1980 s 71(1)(a) (as substituted: see note 3 supra).

6 Ibid s 71(1B)(b) (as added: see note 4 supra).

7 For these purposes, 'programme service' has the same meaning as in the Broadcasting Act 1990 s 201 (see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 328): Magistrates' Courts Act 1980 s 71(1)(b) (as substituted: see note 3 supra).

8 Ibid s 71(1)(b) (as substituted: see note 3 supra). For the meaning of 'Great Britain' see PARA 519 note 4 ante.

9 Ibid s 71(1) (as substituted: see note 3 supra).

10 Ibid s 71(1A)(a) (as added: see note 4 supra).

11 Ibid s 71(1A)(b) (as added: see note 4 supra).

12 Ibid s 71(1A)(c) (as added: see note 4 supra).

13 Ibid s 71(1A)(d) (as added: see note 4 supra).

14 Ibid s 71(1)(a) (as substituted: see note 3 supra), s 71(2) (amended by the Children Act 1989 Sch 11 para 8; and the Broadcasting Act 1990 Sch 20 para 29(2)).

15 Magistrates' Courts Act 1980 s 71(1)(b) (as substituted: see note 3 supra), s 71(2) (as amended: see note 14 supra).

16 Ibid s 71(2)(a).

17 Ibid s 71(2)(b).

18 Ibid s 71(2)(c).

19 Ibid s 71(1A)(c) (as added: see note 4 supra), s 71(2) (as amended: see note 14 supra).

20 Ibid s 71(1A)(d) (as added: see note 4 supra), s 71(2) (as amended: see note 14 supra).

21 Ie in ibid s 71 (as amended).

22 Ibid s 71(5).

23 Ibid s 71(3). The fine imposed is one not exceeding level 4 on the standard scale: s 71(3) (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). As to the standard scale see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142.

24 Magistrates' Courts Act 1980 s 71(4). As to the Attorney General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 529.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(viii) Family Proceedings/743. Privacy for children involved in certain proceedings.



### **743. Privacy for children involved in certain proceedings.**

No person may publish<sup>1</sup> any material<sup>2</sup> which is intended, or likely, to identify: (1) any child as being involved in any proceedings before a magistrates' court<sup>3</sup> in which any power under the Children Act 1989 may be exercised by the court with respect to that or any other child<sup>4</sup>; or (2) an address or school as being that of a child involved in any such proceedings<sup>5</sup>. If satisfied that the welfare of the child requires it, the court or the Lord Chancellor<sup>6</sup> may by order dispense with these requirements to such extent as may be specified in the order<sup>7</sup>.

Any person who contravenes the provisions described above is guilty of an offence<sup>8</sup> and is liable, on summary conviction, to a fine<sup>9</sup>.

1 For these purposes, 'publish' includes: (1) include in a programme service (within the meaning of the Broadcasting Act 1990 s 201 (see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 328)); or (2) cause to be published: Children Act 1989 s 97(5) (amended by the Broadcasting Act 1990 s 203(1), Sch 20 para 53). See further CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 227.

2 For these purposes, 'material' includes any picture or representation: Children Act 1989 s 97(5).

3 For the meaning of 'magistrates' court' see PARA 583 ante.

4 See the Children Act 1989 s 97(2)(a).

5 Ibid s 97(2)(b). The Magistrates' Courts Act 1980 s 69 (as amended) (sittings of magistrates' courts for family proceedings) (see PARA 741 ante) and s 71 (as amended) (newspaper reports of certain proceedings) (see PARA 742 ante) apply in relation to proceedings to which the Children Act 1989 s 97 (as amended) applies: s 97(8) (amended by the Courts and Legal Services Act 1990 s 116, Sch 16 para 24; and the Access to Justice Act 1999 s 72(b)).

6 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

7 Children Act 1989 s 97(4) (amended by the Transfer of Functions (Magistrates' Courts and Family Law) Order 1992, SI 1992/709, art 3(2), Sch 2).

8 It is a defence in proceedings for such an offence for the accused to prove that he did not know, and had no reason to suspect, that the published material was intended, or likely, to identify the child: Children Act 1989 s 97(3).

9 Ibid s 97(6). The fine imposed must not exceed level 4 on the standard scale: s 97(6). As to the standard scale SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142.

## **UPDATE**

### **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### **743 Privacy for children involved in certain proceedings**

NOTE 5--See *P v BW* [2003] EWHC 1541 (Fam), [2004] Fam 22; CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 227.

TEXT AND NOTE 7--1989 Act s 97(4) further amended, s 97(9) added: Constitutional Reform Act 2005 Sch 4 para 208.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(viii) Family Proceedings/744. Reconciliation.

#### **744. Reconciliation.**

On an application for a financial order under the Domestic Proceedings and Magistrates' Courts Act 1978<sup>1</sup>, the court, before deciding whether to exercise its powers, must consider whether there is any possibility of reconciliation between the parties to the marriage in question, and if this appears a reasonable possibility at any stage of the proceedings it may adjourn the hearing to enable attempts to be made to effect a reconciliation<sup>2</sup>.

Upon such an adjournment the court may request an officer of the Children and Family Court Advisory and Support Service<sup>3</sup> or any other person to attempt to effect a reconciliation, and that officer or other person must report in writing to the court whether the attempt has been successful or not<sup>4</sup>.

1 Ibid under the Domestic Proceedings and Magistrates' Courts Act 1978 s 2 (as amended).

2 Ibid s 26(1). Letters written by one party to a marriage to a probation officer consulted by the other with a view to reconciliation are privileged: *Mole v Mole* [1951] P 21, [1950] 2 All ER 328, CA. As to the privilege for reconciliation negotiations see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 833.

3 See the Criminal Justice and Court Services Act 2000 s 11(3); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 230 et seq.

4 Domestic Proceedings and Magistrates' Courts Act 1978 s 26(2) (amended by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 para 57(a)). No other information may be included in the report: Domestic Proceedings and Magistrates' Courts Act 1978 s 26(2).

#### **UPDATE**

#### **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

#### **744 Reconciliation**

NOTE 4--The request may also be made to a Welsh family proceedings officer, within the meaning given by the Children Act 2004 s 35 (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 230): Domestic Proceedings and Magistrates' Courts Act 1978 s 26(2) (further amended by the 2004 Act Sch 3 para 1).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(viii) Family Proceedings/745. Examination of witnesses by the court.

#### **745. Examination of witnesses by the court.**

Where, in any family proceedings<sup>1</sup> or proceedings for the enforcement or variation of an order made in such proceedings, it appears to a magistrates' court<sup>2</sup> that a party who is not legally

represented<sup>3</sup> is unable effectively to examine or cross-examine a witness, the court must ascertain<sup>4</sup> from that party what are the matters about which the witness may be able to depose or on which he ought to be cross-examined, and the court must then put or cause to be put to the witness such questions in the interests of that party as may appear to the court to be proper<sup>5</sup>.

1 For the meaning of 'family proceedings' see PARA 739 ante.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 The legal representative of a party must be allowed to conduct his client's case as seems to him to be right, and where the court's intervention obstructs him in asking vital questions, the High Court will order a rehearing: see *Hobby v Hobby* [1954] 2 All ER 395, [1954] 1 WLR 1020, DC. For a case in which a rehearing was ordered where a party's solicitor had been stopped in his cross-examination of the other party see *Lonnkvist v Lonnkvist* [1952] WN 88, DC. See also note 5 infra.

4 Where a magistrates' court fails to observe this requirement, so that important evidence is not adduced, the High Court will order a rehearing: *Fox v Fox* [1954] 3 All ER 526, [1954] 1 WLR 1472, DC; *Marjoram v Marjoram* [1955] 2 All ER 1, [1955] 1 WLR 520, DC. The question of whether such a failure strikes at the root of the proceedings was left undecided in *Ratcliff v Ratcliff* [1964] 3 All ER 351, [1964] 1 WLR 1098, DC. Where an unrepresented party has no positive case to make before the court the justices are under no duty to put questions to the witnesses: *Brewster v Brewster* [1971] 2 All ER 993, [1971] 1 WLR 1102, DC.

5 Magistrates' Courts Act 1980 s 73 (amended by the Children Act 1989 s 92(11), Sch 11 para 8(c)). This provision is designed to protect an unrepresented party, and does not justify magistrates in taking a represented party's case out of his advocate's hands: *Ratcliff v Ratcliff* [1964] 3 All ER 351, [1964] 1 WLR 1098, DC.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(ix) Proceedings in Youth Courts/746. Jurisdiction of youth courts.

## (ix) Proceedings in Youth Courts

### 746. Jurisdiction of youth courts.

On the advice of, or after consultation with, the rules committee for magistrates' courts<sup>1</sup> appointed by him<sup>2</sup>, the Lord Chancellor<sup>3</sup> may by rules assign to youth courts<sup>4</sup> the hearing of any applications for orders or licences relating to children or young persons<sup>5</sup> which are cognisable by justices, magistrates' courts or petty sessional courts<sup>6</sup>.

No charge against a child or young person, and no application the hearing of which is assigned to youth courts, may be heard by a court of summary jurisdiction which is not a youth court<sup>7</sup>, except that: (1) a charge made jointly against a child or young person and a person who has attained the age of 18 years is to be heard by a court of summary judgment other than a youth court<sup>8</sup>; (2) where a child or young person is charged with an offence, the charge may be heard by a court of summary jurisdiction which is not a youth court if a person who has attained the

age of 18 years is charged at the same time with aiding, abetting, causing, procuring, allowing or permitting that offence<sup>9</sup>; and (3) where, in the course of any proceedings before any court of summary jurisdiction other than a youth court, it appears that the person to whom the proceedings relate is a child or young person, nothing in this provision<sup>10</sup> is to be construed as preventing the court, if it thinks fit so to do, from proceeding with the hearing and determination of those proceedings<sup>11</sup>. A magistrates' court which is not a youth court may hear an information against a child or young person if he is charged<sup>12</sup>: (a) with aiding, abetting, causing, procuring, allowing or permitting an offence with which a person who has attained the age of 18 is charged at the same time<sup>13</sup>; or (b) with an offence arising out of circumstances which are the same as or connected with those giving rise to an offence with which a person who has attained the age of 18 is charged at the same time<sup>14</sup>.

If a notification that the accused desires to plead guilty without appearing before the court is received by the justices' chief executive for a court<sup>15</sup> and the court has no reason to believe that the accused is a child or young person, then, if he is a child or young person he is deemed<sup>16</sup> to have attained the age of 18<sup>17</sup>. Conversely, a youth court sitting for the purpose of hearing a charge against a person who is believed to be a child or young person may, if it thinks fit to do so, proceed with the hearing and determination of the charge notwithstanding that it is discovered that the person in question is not a child or young person<sup>18</sup>. The attainment of the age of 18 years by a person in whose case an order for conditional discharge has been made, does not deprive a youth court of jurisdiction to enforce his attendance and deal with him in respect of the commission of a further offence<sup>19</sup>.

1 For the meaning of 'magistrates' courts' see PARA 583 ante.

le under the Magistrates' Courts Act 1980 s 144(1) (as amended): see PARA 588 ante.

As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

As to the constitution of youth courts see PARAS 608-611 ante.

5 For the meanings of 'child' and 'young person' see PARA 608 note 2 ante.

6 See the Magistrates' Courts Act 1980 s 145(1)(i). Section 145(1)(i) empowers the Lord Chancellor to make rules for purposes mentioned in specified repealed enactments, in this case the Children and Young Persons Act 1933 s 46(3). As to rules made for these purposes see PARA 588 ante.

7 Children and Young Persons Act 1933 s 46(1) (amended by the Criminal Justice Act 1991 s 100, Sch 11 para 40). No direction, whether contained in the Children and Young Persons Act 1933 or any other Act, that a charge is to be brought before a youth court is to be construed as restricting the powers of any justice or justices to entertain an application for bail or for a remand, and to hear such evidence as may be necessary for that purpose: s 46(2) (amended by the Criminal Justice Act 1991 ss 68, 100, Sch 8 para 1(2), Sch 11 para 40). See *R v Uxbridge Youth Court, ex p Howard* (1998) 162 JP 327, sub nom *R v Uxbridge Youth Court, ex p H* (1998) Times, 7 April; *R v B (Child: Mode of Trial for Indecency)* [2001] EWCA Crim 194, [2001] 3 FCR 341, [2001] 06 LS Gaz R 45, CA.

8 Children and Young Persons Act 1933 s 46(1) proviso (a) (amended by the Criminal Justice Act 1991 Sch 8 para 1(2), Sch 11 para 40). In certain circumstances, however, a person under 18 charged jointly with an older person or persons may be remitted to a youth court: see PARA 747 post.

9 Children and Young Persons Act 1933 s 46(1) proviso (b) (amended by the Criminal Justice Act 1991 Sch 8 para 1(2), Sch 11 para 40).

10 le the Children and Young Persons Act 1933 s 46(1) (as amended): see the text and notes 1-9 supra, 11 infra.

11 Ibid s 46(1) proviso (c) (amended by the Criminal Justice Act 1991 Sch 8 para 1(2), Sch 11 para 40).

12 Children and Young Persons Act 1963 s 18 (amended by the Criminal Justice Act 1991 Sch 11 para 40).

13 Children and Young Persons Act 1963 s 18(a) (s 18(a), (b) amended by the Criminal Justice and Public Order Act 1994 s 168(1), Sch 9 para 5). As to a person's age see PARA 738 ante.

14 Children and Young Persons Act 1963 s 18(b) (as amended: see note 13 supra).

15 le in pursuance of the Magistrates' Courts Act 1980 s 12 (as amended): see PARA 705 ante.

16 le for the purposes of the Children and Young Persons Act 1933 s 46(1) (as amended) (see the text and note 7 supra) in its application to the proceedings in question: see s 46(1A) (added by the Children and Young Persons Act 1969 s 72(3) Sch 5 para 4; and amended by the Magistrates' Courts Act 1980 s 154, Sch 7 para 6; the Criminal Justice Act 1991 Sch 8 para 1(2), Sch 11 para 40; and the Access to Justice Act 1999 s 90(1), Sch 13 paras 8, 11(a)).

17 Children and Young Persons Act 1933 s 46(1A) (as added and amended: see note 16 supra).

18 Ibid s 48(1) (amended by the Children and Young Persons Act 1963 s 64(1), (3), Sch 3 para 12, Sch 5; and the Criminal Justice Act 1991 Sch 11 para 40). However, see also *R v Chelsea Justices, ex p DPP* [1963] 3 All ER 657, [1963] 1 WLR 1138 (no jurisdiction if court knew the young person was 17 when the charge was preferred).

19 Children and Young Persons Act 1933 s 48(2) (substituted by the Criminal Justice Act 1948 s 79, Sch 9; and amended by the Children and Young Persons Act 1969 s 72(4), Sch 6; and the Criminal Justice Act 1991 Sch 8 para 1(2), Sch 11 para 40).

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(ix) Proceedings in Youth Courts/747. Power to remit a person under 18 for trial to a youth court.

### 747. Power to remit a person under 18 for trial to a youth court.

Where: (1) a person under the age of 18 years<sup>1</sup> ('the juvenile') appears or is brought before a magistrates' court<sup>2</sup> other than a youth court<sup>3</sup> on an information<sup>4</sup> jointly charging him and one or more other persons with an offence<sup>5</sup>; and (2) that other person, or any of those other persons, has attained that age<sup>6</sup>, head (a) and head (b) below have effect notwithstanding the provision<sup>7</sup> which would otherwise require the charge against the juvenile to be heard by a magistrates' court other than a youth court<sup>8</sup>.

If the court: (a) proceeds to the summary trial<sup>9</sup> of the information in the case of both or all of the accused, and the older accused<sup>10</sup> or each of the older accused pleads guilty<sup>11</sup>; or (b) in the case of the older accused or each of the older accused, proceeds to inquire into the information as examining justices<sup>12</sup> and either commits<sup>13</sup> him for trial or discharges him, and in the case of the juvenile, proceeds to the summary trial of the information<sup>14</sup>, then, if in either situation the juvenile pleads not guilty, the court may before any evidence is called in his case remit him for trial to a youth court acting for the same place as the remitting court or for the place where he habitually resides<sup>15</sup>. A person so remitted to a youth court must be brought before and tried by a youth court accordingly<sup>16</sup>. Where a person is so remitted to a youth court he has no right of appeal against the order of remission, and the remitting court may<sup>17</sup> give such directions as appear to be necessary with respect to his custody or for his release on bail until he can be brought before the youth court<sup>18</sup>.

- 1 As to a person's age see PARA 738 ante.
- 2 For the meaning of 'magistrates' court' see PARA 583 ante.
- 3 As to the constitution of youth courts see PARAS 608-611 ante.
- 4 As to informations see PARA 681 et seq ante.
- 5 Magistrates' Courts Act 1980 s 29(1)(a) (s 29(1)-(3), (5) amended by the Criminal Justice Act 1991 ss 68, 100, Sch 8 para 6, Sch 11 para 40). As to the meaning of 'offence' see PARA 522 note 4 ante.
- 6 Magistrates' Courts Act 1980 s 29(1)(b). Section 29 (as amended) applies in relation to a corporation as if it were an individual who has attained the age of 18 years: s 29(5) (as amended: see note 5 supra).
- 7 In the Children and Young Persons Act 1933 s 46(1) proviso (a) (as amended): see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1266.
- 8 Magistrates' Courts Act 1980 s 29(1) (as amended: see note 5 supra).
- 9 As to the procedure on summary trial see PARA 726 et seq ante.
- 10 For these purposes, 'the older accused' means such one or more of the accused as have attained the age of 18 years: Magistrates' Courts Act 1980 s 29(1) (as amended: see note 5 supra).
- 11 Ibid s 29(2)(a).
- 12 As to the use of the expression 'examining justices' see PARA 524 note 9 ante.
- 13 As to committal proceedings see PARAS 668-677 ante.
- 14 Magistrates' Courts Act 1980 s 29(2)(b).
- 15 Ibid s 29(2) (as amended: see note 5 supra).
- 16 Ibid s 29(3) (as amended: see note 5 supra).
- 17 In subject to the Criminal Justice and Public Order Act 1994 s 25 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1170.
- 18 Magistrates' Courts Act 1980 s 29(4) (amended by the Criminal Justice Act 1991 Sch 8 para 6, Sch 11 para 40; and the Criminal Justice and Public Order Act 1994 s 168(2), Sch 10 para 41).

## **UPDATE**

### **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(ix) Proceedings in Youth Courts/748. Sittings.

### **748. Sittings.**

Youth courts<sup>1</sup> sit as often as may be necessary for the purpose of exercising any jurisdiction conferred on them by or under the Children and Young Persons Act 1933 or any other Act<sup>2</sup>, and may sit on any day to hear and determine a charge against a child<sup>3</sup> or young person<sup>4</sup> in respect of an indictable offence<sup>5</sup>.

No person may be present at any sitting of a youth court<sup>6</sup> except: (1) members and officers of the court<sup>7</sup>; (2) parties to the case before the court, their solicitors and counsel, and witnesses and other persons directly concerned in the case<sup>8</sup>; (3) bona fide representatives of newspapers or news agencies<sup>9</sup>; and (4) such other persons as the court may specially authorise to be present<sup>10</sup>.

1 As to the constitution of youth courts see PARAS 608-611 ante.

2 Children and Young Persons Act 1933 s 47(1) (amended by the Criminal Justice Act 1991 s 100, Sch 11 para 40).

3 For the meaning of 'child' see PARA 608 note 2 ante.

4 For the meaning of 'young person' see PARA 608 note 2 ante.

5 Children and Young Persons Act 1933 s 48(4) (amended by the Magistrates' Courts Act 1952 s 132(1), Sch 6; and the Criminal Justice Act 1991 Sch 11 para 40). A magistrates' court may not try summarily an information for an indictable offence or hear a complaint except when sitting in a petty sessional courthouse: Magistrates' Courts Act 1980 s 121(3)(a). As to indictable offences see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1102. As to informations and complaints see PARA 681 ante.

6 Children and Young Persons Act 1933 s 47(2) (amended by the Criminal Justice Act 1991 Sch 11 para 40; and the Crime and Disorder Act 1998 ss 47(7), 120(2), Sch 10).

7 Children and Young Persons Act 1933 s 47(2)(a).

8 Ibid s 47(2)(b). See *R v Southwark Juvenile Court, ex p NJ* [1973] 3 All ER 383, sub nom *R v Southwark Juvenile Court, ex p J* [1973] 1 WLR 1300, DC (where the welfare officer was excluded certiorari (now termed a quashing order) was granted as the welfare officer has the right to attend the sitting of the court as a person directly concerned in the case, and her exclusion meant that justice had not been seen to have been done; however, statute is directory and not mandatory); followed in *R v Willesden Justices, ex p Brent London Borough Council* [1988] 2 FLR 95.

9 Children and Young Persons Act 1933 s 47(2)(c). As to restrictions on newspaper reports see PARA 753 post. As from a day to be appointed s 47(2)(c) is amended to provide that the words 'newspapers or news agencies' are substituted by 'news gathering or reporting organisations': see s 47(2)(c) (prospectively amended by the Youth Justice and Criminal Evidence Act 1999 s 67(1), Sch 4 para 2). At the date at which this volume states the law no such day had been appointed.

10 Children and Young Persons Act 1933 s 47(2)(d).

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### 748 Sitings

TEXT AND NOTE 8--In head (2) reference to solicitors and counsel is now to legal representative, which means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act) (see LEGAL PROFESSIONS vol 65 (2008) PARA 512): Children and Young Persons Act 1933 ss 47(2)(b), 107 (s 47(2)(b), definition in s 107 added, by Legal Services Act 2007 Sch 21 paras 18, 20).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(ix) Proceedings in Youth Courts/749. Conduct of proceedings; evidence.

#### **749. Conduct of proceedings; evidence.**

Subject to any special rules or enactments regulating their constitution and procedure, youth court<sup>1</sup> proceedings are generally governed by the provisions of the Magistrates' Courts Act 1980<sup>2</sup> and the rules under that Act<sup>3</sup>.

Under the rules applicable to youth courts<sup>4</sup>, the court must explain to the child or young person<sup>5</sup> the nature of the proceedings and, where he is charged with an offence, the substance of the charge, in simple language suitable to his age and understanding<sup>6</sup>. Where he is charged with an offence, he must then be asked whether he pleads guilty or not guilty to the charge<sup>7</sup>. If the child or young person does not plead guilty, the court must hear the evidence of the witnesses in support of the charge<sup>8</sup>. At the close of the evidence in chief of each witness, he may be cross-examined by or on behalf of the child or young person<sup>9</sup>. Except where a child or young person is legally represented, the court must allow his parent<sup>10</sup> or guardian<sup>11</sup> to assist him in conducting his case<sup>12</sup>. If in any case where the child or young person is not legally represented or assisted<sup>13</sup>, he, instead of asking questions by way of cross-examination, makes assertions, the court must then put to the witness such questions as it thinks necessary on his behalf and may for this purpose question him in order to bring out or clear up any point arising out of any such assertions<sup>14</sup>. If it appears to the court after hearing the evidence in support of the charge or application that a *prima facie* case is made out, the child or young person must, if he is not the applicant and is not legally represented, be told that he may give evidence or address the court, and the evidence of any witnesses must be heard<sup>15</sup>.

1 As to the constitution of youth courts see PARAS 608-611 ante.

2 See the Magistrates' Courts Act 1980 s 152 (amended by virtue of the Criminal Justice Act 1991 s 70(2)); and PARA 505 ante.

3 See the Magistrates' Courts Rules 1981, SI 1981/552 (as amended). Those rules have effect subject to: (1) the Family Proceedings Courts (Children Act 1989) Rules 1991, SI 1991/1395 (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 207), and the Family Proceedings Courts (Matrimonial Proceedings etc) Rules 1991, SI 1991/1991 (as amended) (Magistrates' Courts Rules 1981, SI 1981/552, r 3 (substituted by SI 1991/1991)); and (2) the Magistrates' Courts (Children and Young Persons) Rules 1992, SI 1992/2071 (as amended) (r 3(2)). As to the form of oath to be taken by any person before a youth court see CIVIL PROCEDURE vol 11 (2009) PARA 1021.

4 The Magistrates' Courts (Children and Young Persons) Rules 1992, SI 1992/2071, Pt II (rr 4-12) (as amended), which applies in the case of a child or young person (see note 5 *infra*) brought before the court charged with an offence, but only rr 5, 6, 8(3) apply where the court is inquiring into the offence as examining justices: see r 4 (amended by SI 1998/2167). The power to make such rules now lies under the Magistrates' Courts Act 1980 s 144 (as amended), s 145 (as amended; prospectively further amended): see PARA 588 ante.

5 'Child' means person under the age of 14: Magistrates' Courts (Children and Young Persons) Rules 1992, SI 1992/2071, r 2(1). 'Young person' means a person who has attained the age of 14 and is under the age of 18: r 2(1). As to a person's age see PARA 738 ante.

6 *Ibid* r 6.

7 *Ibid* r 7.

8 *Ibid* r 8(1)(a). For other circumstances in which r 8(1) applies see r 4(2) (amended by SI 1998/2167), Magistrates' Courts (Children and Young Persons) Rules 1992, SI 1992/2071, r 8(1)(b).

9 *Ibid* r 8(2). Rule 8(2) does not, however, apply where the proceedings are of a kind mentioned in rr 4(2), 8(1)(b) (see note 8 *supra*), and the child or young person is the applicant: r 8(2).



10 For these purposes, unless the context otherwise requires, references to a parent in relation to a child or young person are references, where a local authority has parental responsibility for him under the Children Act 1989 (CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 134), to the local authority, and, in any other case, to a parent who has parental responsibility for him under that Act: Magistrates' Courts (Children and Young Persons) Rules 1992, SI 1992/2071, r 2(2).

11 For these purposes, 'guardian' has the same meaning as in the Children and Young Persons Act 1933 s 107(1) (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 747): Magistrates' Courts (Children and Young Persons) Rules 1992, SI 1992/2071, r 2(1).

12 Ibid r 5(1). Where the parent or guardian cannot be found or cannot in the opinion of the court reasonably be required to attend, the court may allow any relative or other responsible person to take his place: r 5(2).

13 Ie as provided for by ibid r 5: see the text and notes 11-12 supra.

14 Ibid r 8(3).

15 Ibid r 9.

## **UPDATE**

### **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### **749 Conduct of proceedings; evidence**

NOTE 8--SI 1992/2071 r 4 replaced by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'), r 38.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(ix) Proceedings in Youth Courts/750. Procedure after finding.

### **750. Procedure after finding.**

Where a child or young person<sup>1</sup> before a youth court<sup>2</sup> is found guilty of an offence, whether after a plea of guilty or otherwise<sup>3</sup>, he, and his parent or guardian<sup>4</sup>, if present, must be given an opportunity to make a statement<sup>5</sup>. The court must take into consideration all available information<sup>6</sup> as to the general conduct, home surroundings, school record and medical history of the child or young person and, in particular, must take into consideration information provided in pursuance of investigations by local authorities<sup>7</sup>. Any written report<sup>8</sup> of a probation officer, local authority, local education authority, education establishment or registered medical practitioner<sup>9</sup> may be received and considered by the court without being read aloud<sup>10</sup>. If the court considers it necessary in the interests of the child or young person, it may require him or his parent or guardian, if present, to withdraw from the court<sup>11</sup>. Before finally disposing of the case, or before remitting the case to another court<sup>12</sup> the court must inform the child or young person and his parents or guardian, if present, or any person assisting him in the case, of the manner in which it proposes to deal with the case and allow any of those persons so informed to make representations<sup>13</sup>. However, the relevant minor must not be so informed if the court considers it undesirable so to do<sup>14</sup>. On making any order, the court must explain to the child or young person the general nature and effect of the order unless, in the case of an order

requiring his parent or guardian to enter into a recognisance, it appears to the court undesirable to do so<sup>15</sup>.

1 For the meanings of 'child' and 'young person' see PARA 749 note 5 ante.

2 As to the constitution of youth courts see PARAS 608-611 ante.

3 Magistrates' Courts (Children and Young Persons) Rules 1992, SI 1992/2071, r 10(1)(a). In addition to applying where the child or young person is found guilty of an offence, whether after a plea of guilty or otherwise, r 10 (as amended) also applies where in proceedings of the kind mentioned in r 4(2)(a), r 4(2)(b) or r 4(2)(c) (see PARA 749 ante) the court is satisfied that the case for the applicant, if the child or young person is not the applicant, has been made out, or if he is the applicant, has not been made out: r 10(1)(b).

4 For the meaning of 'parent' see PARA 749 note 10 ante. For these purposes, 'guardian' has the same meaning as in the Children and Young Persons Act 1933 s 107(1) (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 747): Magistrates' Courts (Children and Young Persons) Rules 1992, SI 1992/2071, r 2(1).

5 Ibid r 10(2)(a).

6 If such information is not fully available the court must consider the desirability of adjourning the proceedings for such inquiry as may be necessary: ibid r 10(2)(c).

7 Ibid r 10(2)(b). Such information provided by local authorities is provided in pursuance of the Children and Young Persons Act 1969 s 9 (as amended): see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1240. As to the power to remand the child or young person for the necessary inquiries to be made see PARA 751 post.

8 The court must arrange for copies of any written report before the court to be made available to: (1) the legal representative, if any, of the child or young person; (2) any parent or guardian of the relevant minor who is present at the hearing; and (3) the relevant minor, except where the court otherwise directs on the ground that it appears to it impracticable to disclose the report having regard to his age and understanding or undesirable to do so having regard to potential serious harm which might thereby be suffered by him: Magistrates' Courts (Children and Young Persons) Rules 1992, SI 1992/2071, r 10(3).

9 In any proceedings, other than proceedings for an offence, before a youth court, and on any appeal from a decision of a youth court in any such proceedings, any document purporting to be a certificate of a fully registered medical practitioner as to any person's physical or mental condition is admissible as evidence of that condition: Children and Young Persons Act 1963 s 26 (amended by the Criminal Justice Act 1991 s 100, Sch 11 para 40). As to registered medical practitioners see MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 4.

10 Magistrates' Courts (Children and Young Persons) Rules 1992, SI 1992/2071, r 10(2)(d). In any case in which the relevant minor is not legally represented and where a report which has not been made available to him in accordance with a direction under head (3) in note 8 supra has been considered without being read aloud in r 10(2)(d) or where he or his parent or guardian has been required to withdraw from the court in pursuance of r 10(2)(e) (see the text to note 11 infra), then the child or young person must be told the substance of any part of the information given to the court bearing on his character or conduct which the court considers to be material to the manner in which the case should be dealt with unless it appears to it impracticable so to do having regard to his age and understanding: r 10(4)(a). His parent or guardian, if present, has a similar right, but with an additional right to information bearing on the child's or young person's home surroundings or health: r 10(4)(b). If such a person, having been told the substance of any part of such information, desires to produce further evidence in that regard, then, if it thinks the further evidence would be material, the court must adjourn the proceedings for the production of that evidence and must, if necessary in the case of a report, require the attendance at the adjourned hearing of the person who made the report: r 10(4)(b).

11 Ibid r 10(2)(e).

12 Ie in pursuance of the Children and Young Persons Act 1933 s 56 (now repealed).

13 Magistrates' Courts (Children and Young Persons) Rules 1992, SI 1992/2071, r 11(1).

14 Ibid r 11(1).

15 Ibid r 11(2).

## UPDATE

## **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

## **750 Procedure after finding**

NOTE 12--SI 1992/2071 r 11 replaced by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'), r 44.2, which refers to the Powers of Criminal Courts (Sentencing) Act 2000 s 8.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(ix) Proceedings in Youth Courts/751. Remand for further inquiries.

### **751. Remand for further inquiries.**

When a youth court<sup>1</sup> has remanded a child or young person for information to be obtained with respect to him<sup>2</sup>, any youth court acting for the same petty sessions area<sup>3</sup> or place may in his absence extend the period for which he is remanded, so, however, that he appears before a court or a justice of the peace at least once in every 21 days, and when the required information has been obtained, may deal with him finally<sup>4</sup>.

1 As to the constitution of youth courts see PARAS 608-611 ante.

2 The Magistrates' Courts (Children and Young Persons) Rules 1988, SI 1988/913, r 10(1)(c) (revoked) required a court to consider the desirability of remanding the child or young person for such inquiry as may be necessary, but the Magistrates' Courts (Children and Young Persons) Rules 1992, SI 1992/2071, r 10(2)(c), referred not to remand but to adjournment of the proceedings: see PARA 750 note 6 ante. However, r 12, reproduced exactly from the Magistrates' Courts (Children and Young Persons) Rules 1988, SI 1988/913, clearly envisages the remanding of a child or young person during the period of the inquiries (see note 4 infra). As to the power to adjourn the trial see PARA 707 ante; and as to remands on adjournment see PARA 711 ante.

3 As to petty sessions areas see PARAS 591-594 ante.

4 Children and Young Persons Act 1933 s 48(3) (amended by the Children and Young Persons Act 1969 ss 79, 83(3), Sch 9, Sch 10 Pt I; the Criminal Justice Act 1991 s 100, Sch 11 para 40; and the Access to Justice Act 1999 s 76(2), Sch 10 paras 14, 15). Where a child or young person has been remanded, and the period of remand is extended in his absence in accordance with the Children and Young Persons Act 1933 s 48 (as amended), notice must be given to him and his sureties, if any, of the date at which he will be required to appear before the court: Magistrates' Courts (Children and Young Persons) Rules 1992, SI 1992/2071, r 12.

## **UPDATE**

## **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(ix) Proceedings in Youth Courts/752. General restriction on reporting.

## **752. General restriction on reporting.**

In relation to any proceedings<sup>1</sup> in any court<sup>2</sup> the court may direct that<sup>3</sup>: (1) no newspaper report of the proceedings may reveal the name, address, or school, or include any particulars calculated to lead to the identification, of any child or young person<sup>4</sup> concerned in the proceedings, either as being the person by or against or in respect of whom the proceedings are taken, or as being a witness in those proceedings<sup>5</sup>; and (2) no picture may be published in any newspaper as being or including a picture of any child or young person so concerned in those proceedings<sup>6</sup>, except in so far, if at all, as may be permitted by the direction of the court<sup>7</sup>. Any person who publishes any matter in contravention of any such direction is on summary conviction liable in respect of each offence to a fine<sup>8</sup>. The onus is on the applicant to show cause to restrict publicity<sup>9</sup>.

The power as to the court's directions on reporting restrictions<sup>10</sup> is not part of the jurisdiction of the Crown Court in matters relating to a trial on indictment<sup>11</sup> within the meaning of the Supreme Court Act 1981, and is therefore subject to judicial review<sup>12</sup>. When considering whether to lift reporting restrictions the court must consider whether there are good reasons to name the defendants<sup>13</sup>, and must balance the appropriate interests and considerations<sup>14</sup>. However, the decision to lift reporting restrictions<sup>15</sup> is a matter relating to trial on indictment and is therefore not susceptible to judicial review<sup>16</sup>. A judge has complete discretion to allow representations to be made to him by those whom he considers to have a legitimate interest in the making of, or the opposition to the making of, an order under the Children and Young Persons Act 1933<sup>17</sup>, as there is no statutory limitation on the persons who may do so<sup>18</sup>.

1 As from a day to be appointed 'proceedings' for these purposes means proceedings other than criminal proceedings: Children and Young Persons Act 1933 s 39(3) (prospectively added by the Youth Justice and Criminal Evidence Act 1999 s 48, Sch 2 paras 1, 2, except in relation to criminal proceedings instituted (within the meaning of s 67, Sch 7 para 1(2)) before the day on which Sch 2 para 2(1) comes into force). At the date at which this volume states the law no such day had been appointed.

2 This refers to any proceedings in the court which is considering making the order; thus a court cannot make an order in respect of proceedings before another court: *R v Lee* [1993] 2 All ER 170, [1993] 1 WLR 103, CA. As to the mandatory restrictions on the reporting of youth court proceedings see PARA 753 post.

3 Children and Young Persons Act 1933 s 39(1) (amended by the Children and Young Persons Act 1963 ss 57(1), 64(3), Sch 5).

4 The words 'any particulars calculated to lead to the identification of any child or young person' include revealing the identity of the defendants if such identification would inevitably breach the order by leading to the identification of the child or young person concerned in the proceedings: see *Ex p Godwin* [1992] QB 190, sub nom *R v Crown Court at Southwark, ex p Godwin* [1991] 3 All ER 818, CA. For an example of a case where an order was refused see *R v Lee* [1993] 2 All ER 170, [1993] 1 WLR 103, CA. For the meanings of 'child' and 'young person' see PARA 608 note 2 ante.

5 Children and Young Persons Act 1933 s 39(1)(a) (amended by the Children and Young Persons Act 1963 ss 57(1), 64(3), Sch 5)). The Children and Young Persons Act 1933 s 39 (as amended; prospectively further amended) applies, with the necessary modifications, in relation to sound and television broadcasts as it applies in relation to newspapers: Children and Young Persons Act 1963 s 57(4) (prospectively repealed by the Youth Justice and Criminal Evidence Act 1999 s 67(3), Sch 6). At the date at which this volume states the law no such day had been appointed.

6 Children and Young Persons Act 1933 s 39(1)(b).

7 Ibid s 39(1).

8 Ibid s 39(2). The fine imposed in respect of each offence must not exceed level 5 on the standard scale: s 39(2) (amended by virtue of the Criminal Justice Act 1982 ss 37, 39(2), 46, Sch 3). As to the standard scale see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. Breach of an order will only be punished where the terms of the order under the Children and Young Persons Act 1933 s 39 (as amended) are clear and unambiguous: *Briffet v DPP* [2001] EWHC Admin 841.

9 *R v Central Criminal Court, ex p W, B and C* [2001] 1 Cr App Rep 7, DC.

10 Ie under the Children and Young Persons Act 1933 s 39 (as amended; prospectively further amended): see the text and notes 1-8 supra. In all proceedings to which the power under s 39 (as amended; prospectively further amended) applies, the clerk to the justices must remind the court of its power at the commencement of the proceedings: Home Office Circular 18/56 para 2. When forwarding the depositions in this type of case he must as a matter of course enclose a statement showing that the attention of the examining justices had been called to the power and that they did or did not give a direction prohibiting publication: para 4. On an appeal to the Crown Court, the police should inform the court whether a direction under the power was given in the magistrates' court: para 4. See also Home Office Circular 17/64 para 6.

11 Ie within the meaning of the Supreme Court Act 1981 s 29(3): see JUDICIAL REVIEW vol 61 (2010) PARA 709.

12 See *R v Crown Court at Leicester, ex p S (A Minor)* [1992] 2 All ER 659, [1993] 1 WLR 111n, DC. As to judicial review see JUDICIAL REVIEW.

13 *R v Central Criminal Court, ex p S* [1999] Crim LR 159, DC. See also *Re R (A Minor) (Wardship: Restrictions on Publication)* [1994] 3 All ER 658, CA (protection of ward in relation to publicity arising out of criminal proceedings is a matter for the criminal courts).

14 *R v Central Criminal Court, ex p W, B and C* [2001] 1 Cr App Rep 7, DC.

15 Ie under the Children and Young Persons Act 1933 s 39 (as amended; prospectively further amended): see the text and notes 1-8 supra.

16 *R v Crown Court at Winchester, ex p B (A Minor)* [1999] 4 All ER 53, [1999] 1 WLR 788; not followed in *R v Crown Court at Manchester, ex p H and D* [2000] 2 All ER 166, [2000] 1 WLR 760, DC (decision taken after trial to lift reporting restrictions was collateral to trial and not precluded from judicial review). See also JUDICIAL REVIEW.

17 Ie under the Children and Young Persons Act 1933 s 39 (as amended; prospectively further amended).

18 *Ex p Crook* [1995] 1 All ER 537, [1995] 1 WLR 139, CA.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### 752 General restriction on reporting

NOTE 7--The court must attach proper weight to the interim nature of an interim anti-social behaviour order when considering whether to impose reporting restrictions: *R (on the application of K) v Knowsley MBC* [2004] EWHC 1933 (Admin), (2004) 168 JP 461.

TEXT AND NOTES 11, 12--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(ix) Proceedings in Youth Courts/753. Restrictions on the reporting of youth court proceedings.

### **753. Restrictions on the reporting of youth court proceedings.**

The present law on the restrictions on the reporting of youth court proceedings under the Children and Young Persons Act 1933 is as follows<sup>1</sup>. In relation to:

- 262 (1) proceedings in a youth court<sup>2</sup>;
- 263 (2) proceedings on appeal from a youth court, including proceedings by way of case stated<sup>3</sup>;
- 264 (3) proceedings<sup>4</sup> for varying or revoking supervision orders<sup>5</sup>; and
- 265 (4) proceedings on appeal from a magistrates' court<sup>6</sup>, including proceedings by way of case stated<sup>7</sup>,

the following prohibitions apply<sup>8</sup>, that is to say: (a) no report<sup>9</sup> may be published which reveals the name, address or school of any child or young person<sup>10</sup> concerned in the proceedings<sup>11</sup> or includes any particulars likely to lead to the identification of any child or young person concerned in the proceedings<sup>12</sup>; and (b) no picture may be published or included in a programme service<sup>13</sup> as being or including a picture of any child or young person concerned in the proceedings<sup>14</sup>.

If a report or picture is published or included in a programme service in contravention of these provisions, the following persons, that is to say: (i) in the case of publication of a written report or a picture as part of a newspaper, any proprietor, editor or publisher of the newspaper<sup>15</sup>; and (ii) in the case of the inclusion of a report or picture in a programme service, any body corporate which provides the service and any person having functions in relation to the programme corresponding to those of an editor of a newspaper<sup>16</sup>, is liable on summary conviction to a fine<sup>17</sup>.

If a court is satisfied that it is in the public interest to do so, it may, in relation to a child or young person who has been convicted of an offence, by order dispense to any specified<sup>18</sup> extent with the restrictions imposed on reports of proceedings in which children and young persons are concerned<sup>19</sup> in relation to any proceedings before it<sup>20</sup>, being proceedings relating to<sup>21</sup>:

- 266 (A) the prosecution or conviction of the offender for the offence<sup>22</sup>;
- 267 (B) the manner in which he, or his parent or guardian<sup>23</sup>, must be dealt with in respect of the offence<sup>24</sup>;
- 268 (C) the enforcement, amendment, variation, revocation or discharge of any order made in respect of the offence<sup>25</sup>;
- 269 (D) where an attendance centre order<sup>26</sup> is made in respect of the offence, the enforcement of any relevant rules<sup>27</sup>; or
- 270 (E) where a detention and training order<sup>28</sup> is made, the enforcement of any relevant requirements imposed<sup>29</sup>.

A court may<sup>30</sup> by order dispense to any specified extent with these requirements in relation to a child or young person who is concerned in the proceedings if it is satisfied<sup>31</sup>:

- 271 (aa) that it is appropriate to do so for the purpose of avoiding injustice to the child or young person<sup>32</sup>; or
- 272 (bb) that, as respects such a child or young person<sup>33</sup> who is unlawfully at large<sup>34</sup>, it is necessary to dispense with those requirements for the purpose of

apprehending him and bringing him before a court or returning him to the place in which he was in custody<sup>35</sup>.

In any proceedings for varying or revoking supervision orders<sup>36</sup> before a magistrates' court other than a youth court, or on appeal from such a court, it is the duty of the magistrates' court or the appellate court to announce in the course of the proceedings that the provisions relating to restrictions on reports of proceedings in which children or young persons are concerned<sup>37</sup> apply to the proceedings, and if the court fails to do so those provisions do not apply to the proceedings<sup>38</sup>.

1 As from a day to be appointed the Children and Young Persons Act 1933 s 49 (as substituted) (see the text and notes 2-38 *infra*) is amended by the Youth Justice and Criminal Evidence Act 1999: see PARA 754 *post*. As to the constitution of youth courts see PARAS 608-611 *ante*.

2 Children and Young Persons Act 1933 s 49(2)(a) (s 49 substituted by the Criminal Justice and Public Order Act 1994 s 49).

3 Children and Young Persons Act 1933 s 49(2)(b) (as substituted: see note 2 *supra*). As to proceedings by way of case stated see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2005 *et seq*.

4 *Ie* under the Powers of Criminal Courts (Sentencing) Act 2000 s 65, Sch 7 (as amended): see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1352 *et seq*.

5 Children and Young Persons Act 1933 s 49(2)(c) (as substituted (see note 2 *supra*); and amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 2(1), (2)(a)). As to supervision orders see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 270 *et seq*.

6 *Ie* arising out of proceedings under *ibid* Sch 7 (as amended): see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1352 *et seq*. For the meaning of 'magistrates' court' see PARA 583 *ante*.

7 Children and Young Persons Act 1933 s 49(2)(d) (as substituted (see note 2 *supra*); and amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 2(1), (2)(b)).

8 *Ie* subject to the Children and Young Persons Act 1933 s 49(5) (as substituted): see the text and notes 30-35 *infra*.

9 The reports to which *ibid* s 49 (as substituted and amended) applies are reports in a newspaper and reports included in a programme service, and similarly as respects pictures: s 49(3) (as substituted: see note 2 *supra*).

10 For the meanings of 'child' and 'young person' see PARA 608 note 2 *ante*.

11 For the purposes of the Children and Young Persons Act 1933 s 49 (as substituted and amended) a child or young person is 'concerned' in any proceedings whether as being the person against or in respect of whom the proceedings are taken or as being a witness in the proceedings: s 49(4) (as substituted: see note 2 *supra*).

12 *Ibid* s 49(1)(a) (as substituted: see note 2 *supra*).

13 For these purposes 'programme' has the same meaning as in the Broadcasting Act 1990 s 202(1) (see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 353); Children and Young Persons Act 1933 s 49(11) (as substituted: see note 2 *supra*). For these purposes 'programme service' has the same meaning as in the Broadcasting Act 1990 s 201(1) (as amended) (see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 328); Children and Young Persons Act 1933 s 49(11) (as so substituted).

14 *Ibid* s 49(1)(b) (as substituted: see note 2 *supra*).

15 *Ibid* s 49(9)(a) (as substituted: see note 2 *supra*).

16 *Ibid* s 49(9)(b) (as substituted: see note 2 *supra*).

17 *Ibid* s 49(9) (as substituted: see note 2 *supra*). The fine imposed must not exceed level 5 on the standard scale: s 49(9)(b) (as so substituted). As to the standard scale see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142.

18 For these purposes 'specified' means specified in an order under *ibid* s 49 (as substituted and amended): s 49(11) (as substituted: see note 2 *supra*).

19 *Ie* the requirements of *ibid* s 49 (as substituted and amended).

20 *Ie* to which *ibid* s 49 (as substituted and amended) applies by virtue of s 49(2)(a) (as substituted) or s 49(2)(b) (as substituted): see heads (1) and (2) in the text.

21 *Ibid* s 49(4A) (added by the Crime (Sentences) Act 1997 s 45). A court must not exercise its power under the Children and Young Persons Act 1933 s 49(4A) (as added) without affording the parties to the proceedings an opportunity to make representations, and taking into account any representations which are duly made: s 49(4B) (added by the Crime (Sentences) Act 1997 s 45).

The power to dispense with anonymity, as permitted in certain circumstances by the Children and Young Persons Act 1933 s 49(4A) (as added), has to be exercised with great care, caution and circumspection: *McKerry v Teesdale and Wear Valley Justices* [2000] COD 199, DC.

22 Children and Young Persons Act 1933 s 49(4A)(a) (as added: see note 21 *supra*).

23 For the meaning of 'guardian' see *ibid* s 107(1) (as amended); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 747.

24 *Ibid* s 49(4A)(b) (as added: see note 21 *supra*).

25 *Ibid* s 49(4A)(c) (as added: see note 21 *supra*).

26 As to attendance centre orders see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1358.

27 Children and Young Persons Act 1933 s 49(4A)(d) (as added (see note 21 *supra*); and amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 2(1), (3)(a)). The relevant rules are any made under the Powers of Criminal Courts (Sentencing) Act 2000 s 62(3).

28 As to detention and training orders see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1398.

29 Children and Young Persons Act 1933 s 49(4A)(e) (as added (see note 21 *supra*); and amended by the Crime and Disorder Act 1998 s 119, Sch 8 para 1; and the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 2(1), (3)(b)). The relevant requirements are any imposed under the Powers of Criminal Courts (Sentencing) Act 2000 s 103(6)(b): see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1401.

30 *Ie* in relation to proceedings before it to which the Children and Young Persons Act 1933 s 49 (as substituted and amended) applies: see heads (1) to (4) in the text.

31 *Ibid* s 49(5) (as substituted: see note 2 *supra*). The court's power under s 49(5) (as substituted) may be exercised by a single justice: s 49(8) (as so substituted).

32 *Ibid* s 49(5)(a) (as substituted: see note 2 *supra*).

33 *Ie* a child or young person to whom *ibid* s 49(5) (as substituted) applies.

34 A person who, having been granted bail, is liable to arrest (whether with or without a warrant) is treated as unlawfully at large: *ibid* s 49(11) (as substituted: see note 2 *supra*). As to bail see PARA 712 *et seq* ante; and as to arrest see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 910-935.

35 *Ibid* s 49(5)(b) (as substituted: see note 2 *supra*). The provisions of s 49(5)(b) (as substituted) apply to any child or young person who is charged with or has been convicted of a violent offence, a sexual offence, or an offence punishable in the case of a person aged 21 or over with imprisonment for 14 years or more: s 49(6) (as so substituted). For these purposes, 'violent offence' has the same meaning as in the Powers of Criminal Courts (Sentencing) Act 2000 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 70): Children and Young Persons Act 1933 s 49(11) (as so substituted; definition amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 2(1), (5)). For these purposes, 'sexual offence' has the same meaning as in the Powers of Criminal Courts (Sentencing) Act 2000 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 70): Children and Young Persons Act 1933 s 49(11) (as so substituted; definition amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 2(1), (5)).

The court must not exercise its power under the Children and Young Persons Act 1933 s 49(5)(b) (as substituted) except in pursuance of an application by or on behalf of the Director of Public Prosecutions, and unless notice of the application has been given by the Director of Public Prosecutions to any legal representative of the child or young person: s 49(7) (as so substituted). As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1079 *et seq*. For these purposes,



'legal representative' means an authorised advocate or authorised litigator, as defined by the Courts and Legal Services Act 1990 s 119(1) (see LEGAL PROFESSIONS vol 65 (2008) PARAS 497-498); Children and Young Persons Act 1933 s 49(11) (as so substituted).

36 See note 4 *supra*.

37 In the provisions of the Children and Young Persons Act 1933 s 49 (as substituted and amended).

38 *Ibid* s 49(10) (as substituted (see note 2 *supra*); and amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 2(1), (4)).

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### 753 Restrictions on the reporting of youth court proceedings

TEXT AND NOTES 5, 7, 27, 38--Children and Young Persons Act 1933 s 49(2)(c), (d) substituted, s 49(10) further amended; and Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 2 partly repealed: Criminal Justice and Immigration Act 2008 Sch 4 para 3(1), (2), (4), Sch 28 Pt 1.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(ix) Proceedings in Youth Courts/754. Changes made by the Youth Justice and Criminal Evidence Act 1999 to the restrictions on reporting of youth court proceedings.

### 754. Changes made by the Youth Justice and Criminal Evidence Act 1999 to the restrictions on reporting of youth court proceedings.

As from a day to be appointed the following provisions have effect<sup>1</sup>. In relation to:

- 273 (1) proceedings in a youth court<sup>2</sup>;
- 274 (2) proceedings on appeal from a youth court, including proceedings by way of case stated<sup>3</sup>;
- 275 (3) proceedings<sup>4</sup> for varying or revoking supervision orders<sup>5</sup>; and
- 276 (4) proceedings on appeal from a magistrates' court<sup>6</sup>, including proceedings by way of case stated<sup>7</sup>,

no matter relating to any child or young person<sup>8</sup> concerned in proceedings<sup>9</sup> to which these provisions apply may, while he is under the age of 18, be included in any publication<sup>10</sup> if it is likely to lead members of the public to identify him as someone concerned in the proceedings<sup>11</sup>. If a publication includes any such matter, the following persons are guilty of an offence and liable on summary conviction to a fine<sup>12</sup>: (a) where the publication is a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical<sup>13</sup>; (b) where the publication is a relevant programme any body corporate or Scottish partnership engaged in providing the programme service in which the programme is included, and any person having functions in relation to the programme corresponding to those of an editor of a newspaper<sup>14</sup>; and (c) in the case of any other publication, any person publishing it<sup>15</sup>.

If a court is satisfied that it is in the public interest to do so, it may, in relation to a child or young person who has been convicted of an offence, by order dispense to any specified<sup>16</sup> extent with the restrictions imposed<sup>17</sup> on reports of proceedings in which children and young persons are concerned in relation to any proceedings before it<sup>18</sup>, being proceedings relating to<sup>19</sup>:

- 277 (i) the prosecution or conviction of the offender for the offence<sup>20</sup>;
- 278 (ii) the manner in which he, or his parent or guardian<sup>21</sup>, must be dealt with in respect of the offence<sup>22</sup>;
- 279 (iii) the enforcement, amendment, variation, revocation or discharge of any order made in respect of the offence<sup>23</sup>;
- 280 (iv) where an attendance centre order<sup>24</sup> is made in respect of the offence, the enforcement of any relevant rules<sup>25</sup>; or
- 281 (v) where a detention and training order<sup>26</sup> is made, the enforcement of any relevant requirements imposed<sup>27</sup>.

A court may<sup>28</sup>, by order dispense to any specified extent with these requirements in relation to a child or young person who is concerned in the proceedings if it is satisfied<sup>29</sup>:

- 282 (A) that it is appropriate to do so for the purpose of avoiding injustice to the child or young person<sup>30</sup>; or
- 283 (B) that, as respects a child or young person<sup>31</sup> who is unlawfully at large<sup>32</sup>, it is necessary to dispense with those requirements for the purpose of apprehending him and bringing him before a court or returning him to the place in which he was in custody<sup>33</sup>.

In any proceedings for varying or revoking supervision orders<sup>34</sup> before a magistrates' court other than a youth court, or on appeal from such a court, it is the duty of the magistrates' court or the appellate court to announce in the course of the proceedings that the provisions relating to restrictions on reports of proceedings in which children or young persons are concerned<sup>35</sup> apply to the proceedings, and if the court fails to do so those provisions do not apply to the proceedings<sup>36</sup>.

These provisions extend to England and Wales, Scotland and Northern Ireland, but no reference in these provisions to any court includes a court in Scotland<sup>37</sup>.

1 The provisions of the Children and Young Persons Act 1933 s 49 (substituted by the Criminal Justice and Public Order 1994 s 49; and amended by the Crime (Sentences) Act 1997; the Crime and Disorder Act 1998; the Criminal Justice and Court Services Act 2000; and the Powers of Criminal Courts (Sentencing) Act 2000) (see PARA 753 ante) are prospectively further amended by the Youth Justice and Criminal Evidence Act 1999 s 48, Sch 2 paras 1, 3 as from a day to be appointed under s 68(3). At the date at which this volume states the law no such day had been appointed. As to the current restrictions on reporting of youth court proceedings see PARA 753 ante.

The prospective amendments effected by the Youth Justice and Criminal Evidence Act 1999 Sch 2 paras 1, 3, widen the scope of the restriction on the reporting of court proceedings involving young persons. The principal change is that where the Children and Young Persons Act 1933 s 49 (as substituted and amended: see PARA 753 ante) prohibits the publication of reports, and the inclusion of pictures in a programme service, s 49 (as substituted, amended and prospectively further amended) prohibits the inclusion of information or pictures in 'publications', which is defined as including any speech, writing, programme or other communication in whatever form (thereby including within its scope electronic media and the internet), addressed to the public at large or any section of the public. A different emphasis is also placed on the wording of the prohibition itself: where s 49 (as substituted and amended: see PARA 753 ante) prohibits the revelation of a child's name, address or school or other particulars likely to lead to the identification of the child, s 49 (as substituted, amended and prospectively further amended) absolutely prohibits the inclusion in any publication of any matter likely to lead to the identification of the child, with the currently-specified prohibitions on revealing names, addresses or schools included only as particular examples of prohibited matters.

Additionally, whereas s 49 (as substituted and amended: see PARA 753 ante) extends only to England and Wales, s 49 (as substituted, amended and prospectively further amended) is stated to extend to England,

Wales, Scotland and Northern Ireland: see s 49(12) (prospectively added by the Youth Justice and Criminal Evidence Act 1999 Sch 2 para 3(9)); and the text and note 37 *infra*. As to the modification of the Children and Young Persons Act 1933 s 49 (as substituted, amended and prospectively further amended) in relation to Northern Ireland see s 49(13) (prospectively added by the Youth Justice and Criminal Evidence Act 1999 Sch 2 para 3(9) (itself amended, in relation to the amendments to be made to the Children and Young Persons Act 1933 s 49(13), by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 205)). See also the Children and Young Persons Act 1933 s 49(14) (prospectively added by the Youth Justice and Criminal Evidence Act 1999 Sch 2 para 3(9)).

2 Children and Young Persons Act 1933 s 49(2)(a) (s 49 as substituted: see note 1 *supra*).

3 Children and Young Persons Act 1933 s 49(2)(b) (s 49 as substituted: see note 1 *supra*). As to proceedings by way of case stated see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2005 *et seq*.

4 *Ie* under the Powers of Criminal Courts (Sentencing) Act 2000 s 65, Sch 7 (as amended): see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1352 *et seq*.

5 Children and Young Persons Act 1933 s 49(2)(c) (s 49 as substituted (see note 1 *supra*); s 49(2)(c) amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 2(1), (2)(a)). As to supervision orders see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 270 *et seq*.

6 *Ie* arising out of proceedings under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 (as amended): see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1352 *et seq*. For the meaning of 'magistrates' court' see PARA 583 *ante*.

7 Children and Young Persons Act 1933 s 49(2)(d) (s 49 as substituted (see note 1 *supra*); s 49(2)(d) amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 2(1), (2)(b)).

8 For the meanings of 'child' and 'young person' see PARA 608 note 2 *ante*.

9 For these purposes, a child or young person is 'concerned' in any proceedings if he is a person against or in respect of whom the proceedings are taken, or a person called, or proposed to be called, to give evidence in the proceedings: Children and Young Persons Act 1933 s 49(4) (s 49 as substituted (see note 1 *supra*); s 49(4) prospectively amended (see note 1 *supra*)).

10 'Publication' includes any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public (and for this purpose every relevant programme must be taken to be so addressed), but does not include an indictment or other document prepared for use in particular legal proceedings: *ibid* s 49(3) (s 49 as substituted (see note 1 *supra*); s 49(3) prospectively further substituted (see note 1 *supra*)). The matters relating to a person in relation to which the restrictions imposed by s 49(1) (as prospectively substituted) apply (if their inclusion in any publication is likely to have the result mentioned in s 49(1) (as prospectively substituted)) include in particular: (1) his name; (2) his address; (3) the identity of any school or other educational establishment attended by him; (4) the identity of any place of work; and (5) any still or moving picture of him: s 49(3A) (as prospectively added: see note 1 *supra*). 'Relevant programme' means a programme included in a programme service, within the meaning of the Broadcasting Act 1990 (see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 353): Children and Young Persons Act 1933 s 49(11) (s 49 as substituted (see note 1 *supra*); definition prospectively added (see note 1 *supra*)). 'Picture' includes a likeness however produced: s 49(11) (s 49 as substituted (see note 1 *supra*); definition prospectively added (see note 1 *supra*)).

11 *Ibid* s 49(1) (s 49 as substituted (see note 1 *supra*); s 49(1) prospectively further substituted (see note 1 *supra*)). As to a person's age see PARA 738 *ante*.

12 *Ibid* s 49(9) (s 49 as substituted (see note 1 *supra*); s 49(9) prospectively further substituted (see note 1 *supra*)). The fine imposed must not exceed level 5 on the standard scale: s 49(9) (as so prospectively substituted). As to the standard scale see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. Where a person is charged with an offence under s 49(9) (as prospectively substituted) it is a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication included the matter in question: s 49(9A) (s 49(9A-9E) prospectively added: see note 1 *supra*). If an offence under s 49(9) (as prospectively substituted) committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer, the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly: s 49(9B) (as so prospectively added). For these purposes, 'officer' means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity: s 49(9C) (as so prospectively added). If the affairs of a body corporate are managed by its members, 'director' in s 49(9C) (as prospectively added) means a member of that body: s 49(9D) (as so prospectively added). Where an offence under s 49(9) (as prospectively substituted) is committed by a Scottish partnership and is proved to have been

committed with the consent or connivance of a partner, he as well as the partnership is guilty of the offence and is liable to be proceeded against and punished accordingly: s 49(9E) (as so prospectively added).

13 Ibid s 49(9)(a) (s 49 as substituted (see note 1 supra); s 49(9)(a) prospectively further substituted (see note 1 supra)).

14 Ibid s 49(9)(b) (s 49 as substituted (see note 1 supra); s 49(9)(b) prospectively further substituted (see note 1 supra)).

15 Ibid s 49(9)(c) (s 49 as substituted (see note 1 supra); s 49(9)(c) prospectively further substituted (see note 1 supra)).

16 For these purposes, 'specified' means specified in an order under ibid s 49 (as substituted, amended and prospectively further amended): s 49(11) (s 49 as substituted: see note 1 supra).

17 Ie the restrictions imposed by ibid s 49(1) (as prospectively substituted): see the text and note 11 supra.

18 Ie to which ibid s 49 (as substituted, amended and prospectively further amended) applies by virtue of s 49(2)(a) (as substituted) or s 49(2)(b) (as substituted): see the text to notes 2-3 supra.

19 Ibid s 49(4A) (s 49 as substituted (see note 1 supra); s 49(4A) added by the Crime (Sentences) Act 1997 s 45; and prospectively amended (see note 1 supra)). A court must not exercise this power without affording the parties to the proceedings an opportunity to make representations, and taking into account any representations which are duly made: Children and Young Persons Act 1933 s 49(4B) (s 49 as substituted (see note 1 supra); s 49(4B) added by the Crime (Sentences) Act 1997 s 45).

As from a day to be appointed, the court's power under the Children and Young Persons Act 1933 s 49(4A) (as added and prospectively amended) may be exercised by a single justice: s 49(8) (s 49 as substituted (see note 1 supra); s 49(8) prospectively amended (see note 1 supra)).

20 Children and Young Persons Act 1933 s 49(4A)(a) (s 49 as substituted (see note 1 supra); s 49(4A) as added (see note 19 supra)).

21 For the meaning of 'guardian' see ibid s 107(1) (as amended); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 747.

22 Ibid s 49(4A)(b) (s 49 as substituted (see note 1 supra); s 49(4A) as added (see note 19 supra)).

23 Ibid s 49(4A)(c) (s 49 as substituted (see note 1 supra); s 49(4A) as added (see note 19 supra)).

24 As to attendance centre orders see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1358.

25 Children and Young Persons Act 1933 s 49(4A)(d) (s 49 as substituted (see note 1 supra); s 49(4A) as added (see note 19 supra); s 49(4A)(d) amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 2(1), (3)(a)). The relevant rules are any made under the Powers of Criminal Courts (Sentencing) Act 2000 s 62(3).

26 As to detention and training orders see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1398.

27 Children and Young Persons Act 1933 s 49(4A)(e) (s 49 as substituted (see note 1 supra); s 49(4A) as added (see note 19 supra); s 49(4A)(e) further substituted by the Crime and Disorder Act 1998 s 119, Sch 8 para 1; and amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 2(1), (3)(b)). The relevant requirements are any imposed under the Powers of Criminal Courts (Sentencing) Act 2000 s 103(6)(b): see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1401.

28 Ie in relation to proceedings before it to which the Children and Young Persons Act 1933 s 49 (as substituted, amended and prospectively further amended) applies.

29 Ibid s 49(5) (s 49 as substituted: see note 1 supra). The court's power under s 49(5) (as substituted) may be exercised by a single justice: s 49(8) (as so substituted).

30 Ibid s 49(5)(a) (s 49 as substituted: see note 1 supra).

31 Ie a child or young person to whom ibid s 49(5) (as substituted) applies.

32 A person who, having been granted bail, is liable to arrest (whether with or without a warrant) is treated as unlawfully at large: ibid s 49(11) (s 49 as substituted: see note 1 supra). As to bail see PARA 712 et seq ante; and as to arrest see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 910-935.

33 Ibid s 49(5)(b) (s 49 as substituted: see note 1 supra). The provisions of s 49(5)(b) (as substituted) apply to any child or young person who is charged with or has been convicted of a violent offence, a sexual offence, or an offence punishable in the case of a person aged 18 or over with imprisonment for 14 years or more: s 49(6) (as so substituted; and prospectively amended by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 Pt II para 5).

The court must not exercise its power under the Children and Young Persons Act 1933 s 49(5)(b) (as substituted) except in pursuance of an application by or on behalf of the Director of Public Prosecutions, and unless notice of the application has been given by the Director of Public Prosecutions to any legal representative of the child or young person: s 49(7) (as so substituted). As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

34 See note 4 supra.

35 I.e. the provisions of the Children and Young Persons Act 1933 s 49 (as substituted, amended and prospectively further amended).

36 Ibid s 49(10) (s 49 as substituted (see note 1 supra); s 49(10) amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 2(1), (4)).

37 Children and Young Persons Act 1933 s 49(12) (as prospectively added: see note 1 supra).

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### 754 Changes made by the Youth Justice and Criminal Evidence Act 1999 to the restrictions on reporting of youth court proceedings

TEXT AND NOTES 5, 7, 25, 36--Children and Young Persons Act 1933 s 49(2)(c), (d) substituted, s 49(10) further amended; and Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 2 partly repealed: Criminal Justice and Immigration Act 2008 Sch 4 para 3(1), (2), (4), Sch 28 Pt 1.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(ix) Proceedings in Youth Courts/755. Restrictions on reporting criminal investigations involving persons under 18 years.

### 755. Restrictions on reporting criminal investigations involving persons under 18 years.

As from a day to be appointed the following provisions have effect<sup>1</sup>. Those provisions apply<sup>2</sup> where a criminal investigation<sup>3</sup> has begun in respect of: (1) an alleged offence against the law of England and Wales, or Northern Ireland<sup>4</sup>; or (2) an alleged civil offence<sup>5</sup> (other than an offence falling within head (1) above) committed, whether or not in the United Kingdom, by a person subject to service law<sup>6</sup>.

No matter relating to any person involved in the offence<sup>7</sup> may, while he is under the age of 18, be included in any publication if it is likely to lead members of the public to identify him as a person involved in the offence<sup>8</sup>. However, these restrictions<sup>9</sup> cease to apply once there are proceedings in a court (whether a court in England and Wales, a service court or a court in Northern Ireland) in respect of the offence<sup>10</sup>. In addition, any appropriate criminal court<sup>11</sup> may

by order dispense, to any extent specified in the order, with the imposed restrictions<sup>12</sup> in relation to a person if it is satisfied that it is necessary in the interests of justice to do so<sup>13</sup>. However, when deciding whether to make such an order dispensing (to any extent) with those restrictions in relation to a person, the court must have regard to the welfare of that person<sup>14</sup>.

The matters relating to a person in relation to which those restrictions<sup>15</sup> apply (if their inclusion in any publication is likely to have the result mentioned) include in particular: (a) his name<sup>16</sup>; (b) his address<sup>17</sup>; (c) the identity of any school or other educational establishment attended by him<sup>18</sup>; (d) the identity of any place of work<sup>19</sup>; and (e) any still or moving picture of him<sup>20</sup>.

1 The Youth Justice and Criminal Evidence Act 1999 s 44 is to be brought into force on a day to be appointed by an order made by the Secretary of State under s 68(3). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 530 note 8 ante.

2 Ie subject to *ibid* s 44(3) (not yet in force): see note 8 *infra*.

3 For the purposes of *ibid* s 44 (not yet in force), any reference to a criminal investigation, in relation to an alleged offence, is to an investigation conducted by police officers, or other persons charged with the duty of investigating offences, with a view to it being ascertained whether a person should be charged with the offence: s 44(13)(b) (not yet in force).

4 *Ibid* s 44(1)(a) (not yet in force).

5 For these purposes, 'civil offence' means an act or omission which, if committed in England and Wales, would be an offence against the law of England and Wales: *ibid* s 44(13)(a) (not yet in force).

6 *Ibid* s 44(1)(b) (not yet in force). For the purposes of s 44 (not yet in force), any reference to a person subject to service law is to a person subject to military law, air-force law or the Naval Discipline Act 1957, or any other person to whom provisions of the Army Act 1955 Pt II (ss 24-143) (as amended), the Air Force Act 1955 Pt II (ss 24-143) (as amended), or the Naval Discipline Act 1957 Pt I (ss 1-43B) (as amended) and Pt II (ss 45-92) (as amended) apply, whether with or without any modifications: Youth Justice and Criminal Evidence Act 1999 s 44(13)(c).

7 For the purposes of *ibid* s 44(2) (not yet in force), any reference to a person involved in the offence is to: (1) a person by whom the offence is alleged to have been committed; or (2) if s 44(4)(b) (not yet in force) applies to the publication in question by virtue of s 44(5) (not yet in force): (a) a person against or in respect of whom the offence is alleged to have been committed; or (b) a person who is alleged to have been a witness to the commission of the offence: s 44(4)(a), (b) (not yet in force). However, head (2)(b) *supra* does not include a person in relation to whom the Sexual Offences (Amendment) Act 1992 s 1 (prospectively amended) (anonymity of victims of certain sexual offences) applies in connection with the offence: Youth Justice and Criminal Evidence Act 1999 s 44(4) (not yet in force). Head (2) *supra* applies to a publication if where it is a relevant programme, it is transmitted, or in the case of any other publication, it is published, on or after such date as may be specified in an order made by the Secretary of State: s 44(5) (not yet in force).

8 *Ibid* s 44(2) (not yet in force). If a publication includes any matter in contravention of s 44(2) (not yet in force) the provisions in s 49 (not yet in force) relating to offences apply: s 49(1)(a) (not yet in force). Where the publication is a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical is guilty of an offence: s 49(2) (not yet in force). Where the publication is a relevant programme: (1) any body corporate or Scottish partnership engaged in providing the programme service in which the programme is included; and (2) any person having functions in relation to the programme corresponding to those of an editor of a newspaper, is guilty of an offence: s 49(3) (not yet in force). In the case of any other publication, any person publishing it is guilty of an offence: s 49(4) (not yet in force). A person guilty of an offence under s 49 (not yet in force) is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 49(5) (not yet in force). As to the standard scale see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142.

Where a person is charged with an offence under s 49 (not yet in force) it is a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication included the matter or report in question: s 50(1) (not yet in force). Where: (a) a person is charged with an offence under s 49 (not yet in force); and (b) the offence relates to the inclusion of any matter in a publication in contravention of s 44(2) (not yet in force), it is a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the criminal investigation in question had begun: s 50(2) (not yet in force). Where: (i) heads (a) and (b) *supra* apply; and (ii) the contravention of s 44(2) (not yet in force) does not relate to either: (A) the person by whom the offence mentioned in that provision is alleged to have been committed; or (B) (where that offence is one in relation to which the Sexual Offences (Amendment) Act 1992 s 1 (prospectively amended) applies) a person who is alleged to be a witness to the

commission of the offence, it is a defence to show to the satisfaction of the court that the inclusion in the publication of the matter in question was in the public interest on the ground that, to the extent that they operated to prevent that matter from being so included, the effect of the restrictions imposed by the Youth Justice and Criminal Evidence Act 1999 s 44(2) (not yet in force) was to impose a substantial and unreasonable restriction on the reporting of matters connected with that offence: s 50(3) (not yet in force). Where heads (a) and (b) supra apply, and the contravention of s 44(2) (not yet in force) relates to a person ('the protected person') who is neither the person mentioned in head (i)(A) supra nor a person within head (i)(B) supra who is under the age of 16, in such a case it is a defence, subject to s 50(6) (not yet in force), to prove that written consent to the inclusion of the matter in question in the publication had been given by an appropriate person, if at the time when the consent was given the protected person was under the age of 16, or by the protected person, if that person was aged 16 or 17 at that time, and (where the consent was given by an appropriate person) that written notice had been previously given to that person drawing to his attention the need to consider the welfare of the protected person when deciding whether to give consent: s 50(5) (not yet in force). The defence provided by s 50(5) (not yet in force) is not available if (where the consent was given by an appropriate person) it is proved that written or other notice withdrawing the consent was given to the appropriate recipient by any other appropriate person or by the protected person, and was so given in sufficient time to enable the inclusion in the publication of the matter in question to be prevented: s 50(6) (not yet in force).

For the purposes of s 50 (not yet in force) 'an appropriate person' means (subject to s 50(10), (11)) in England and Wales or Northern Ireland, a person who is a parent or guardian of the protected person: s 50(9) (not yet in force). Where the protected person is, within the meaning of the Children Act 1989, a child who is looked after by a local authority, 'an appropriate person' means a person who is a representative of that authority, or a parent or guardian of the protected person with whom the protected person is allowed to live: Youth Justice and Criminal Evidence Act 1999 s 50(10) (not yet in force). Where the protected person is, within the meaning of the Children (Northern Ireland) Order 1995, SI 1995/755, a child who is looked after by an authority, 'an appropriate person' means a person who is an officer of that authority, or a parent or guardian of the protected person with whom the protected person is allowed to live: Youth Justice and Criminal Evidence Act 1999 s 50(11) (not yet in force). However, no person by whom the offence mentioned in s 44(2) (not yet in force) is alleged to have been committed is, by virtue of s 50(9), (10), (11) (not yet in force), an appropriate person for the purposes of s 50 (not yet in force): s 50(13) (not yet in force). For the purposes of s 50 (not yet in force) 'the appropriate recipient', in relation to a notice under s 50(6)(a), means: (aa) the person to whom the notice giving consent was given; (bb) (if different) the person by whom the matter in question was published; or (cc) any other person exercising, on behalf of the person mentioned in head (bb) supra, any responsibility in relation to the publication of that matter: s 50(14) (not yet in force). For the purposes of s 50(14) (not yet in force), 'person' includes a body of persons and a partnership: s 50(14) (not yet in force). For the purposes of s 50 (not yet in force) 'guardian', in relation to the protected person, means any person who is not a parent of the protected person but who has parental responsibility for the protected person within the meaning of, in England and Wales, the Children Act 1989, or in Northern Ireland, the Children (Northern Ireland) Order 1995, SI 1995/755: Youth Justice and Criminal Evidence Act 1999 s 50(9) (not yet in force).

9 le the restrictions imposed by *ibid* s 44(2) (not yet in force): see the text and notes 7-8 supra.

10 *Ibid* s 44(3) (not yet in force).

11 For the purposes of *ibid* s 44(7) (not yet in force), 'appropriate criminal court' means: (1) in a case where s 44 (not yet in force) applies by virtue of s 44(1)(a)(i) (not yet in force) or s 44(1)(a)(ii) (not yet in force), any court in England and Wales or (as the case may be) in Northern Ireland which has any jurisdiction in, or in relation to, any criminal proceedings (but not a service court unless the offence is alleged to have been committed by a person subject to service law); and (2) in a case where s 44 (not yet in force) applies by virtue of s 44(1)(b) (not yet in force), any court falling within head (1) supra or a service court: s 44(9) (not yet in force).

12 le the restrictions imposed by *ibid* s 44(2) (not yet in force): see the text and notes 7-8 supra.

13 *Ibid* s 44(7) (not yet in force). The power under s 44(7) (not yet in force) of a magistrates' court in England and Wales may be exercised by a single justice: s 44(10) (not yet in force). In the case of a decision of a magistrates' court in England and Wales, or a court of summary jurisdiction in Northern Ireland, to make or refuse to make an order under s 44(7) (not yet in force), the following persons, namely: (1) any person who was a party to the proceedings on the application for the order; and (2) with the leave of the Crown Court, any other person, may, in accordance with rules of court, appeal to the Crown Court against that decision or appear or be represented at the hearing of such an appeal: s 44(11) (not yet in force). On such an appeal the Crown Court may make such order as is necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just: s 44(12) (not yet in force).

14 *Ibid* s 44(8) (not yet in force).

15 le the restrictions imposed by *ibid* s 44(2) (not yet in force): see the text and notes 7-8 supra.

- 16 Ibid s 44(6)(a) (not yet in force).
- 17 Ibid s 44(6)(b) (not yet in force).
- 18 Ibid s 44(6)(c) (not yet in force).
- 19 Ibid s 44(6)(d) (not yet in force).
- 20 Ibid s 44(6)(e) (not yet in force).

## **UPDATE**

### **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### **755 Restrictions on reporting criminal investigations involving persons under 18 years**

NOTE 6--Youth Justice and Criminal Evidence Act 1999 s 44(13)(c) amended: Armed Forces Act 2006 Sch 16 para 158.

NOTE 8--Youth Justice and Criminal Justice Act 1999 ss 49-52 now in force for the purposes of ss 46 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1430), 47 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1302): SI 2004/2428. If an offence committed by a body corporate under the 1999 Act s 49 is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of an officer, the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly: s 51(1). 'Officer' means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity: s 51(2). If the affairs of a body corporate are managed by its members, 'director' means a member of that body: s 51(3).

Head (ii) as to determinations whether anything is in the public interest see the 1999 Act s 52; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1430.

SI 1995/755 amended: Tax Credits Act 2002 Sch 3 paras 51-56, Sch 6 (partly in force: SI 2003/962).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(ix) Proceedings in Youth Courts/756. Power to restrict reporting of criminal proceedings involving persons under 18.

### **756. Power to restrict reporting of criminal proceedings involving persons under 18.**

As from a day to be appointed the following provisions have effect<sup>1</sup>. The provisions described below, which restrict the reporting of criminal proceedings involving persons under 18, apply in relation to any criminal proceedings in any court (other than a service court) in England and Wales or Northern Ireland, and any proceedings (whether in the United Kingdom<sup>2</sup> or elsewhere) in any service court<sup>3</sup>.



The court may direct that no matter relating to any person concerned in the proceedings may while he is under the age of 18 be included in any publication if it is likely to lead members of the public to identify him as a person concerned in the proceedings<sup>4</sup>. Such matters relating to a person in relation to which the restrictions imposed by such a direction<sup>5</sup> apply<sup>6</sup> include in particular<sup>7</sup>: (1) his name<sup>8</sup>; (2) his address<sup>9</sup>; (3) the identity of any school or other educational establishment attended by him<sup>10</sup>; (4) the identity of any place of work<sup>11</sup>; and (5) any still or moving picture of him<sup>12</sup>. However, the court or an appellate court<sup>13</sup> may by direction ('an excepting direction') dispense, to any extent specified in the excepting direction, with the restrictions imposed by a direction<sup>14</sup> if it is satisfied that it is necessary in the interests of justice to do so<sup>15</sup>. The court or an appellate court may also by direction ('an excepting direction') dispense, to any extent specified in the excepting direction, with the restrictions imposed by a direction<sup>16</sup> if it is satisfied that their effect is to impose a substantial and unreasonable restriction on the reporting of the proceedings, and that it is in the public interest to remove or relax that restriction<sup>17</sup>.

1 The Youth Justice and Criminal Evidence Act 1999 s 45 is to be brought into force as from a day to be appointed by an order made by the Secretary of State under s 68(3). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 530 note 8 ante.

2 For the meaning of 'United Kingdom' see PARA 528 note 3 ante.

3 See the Youth Justice and Criminal Evidence Act 1999 s 45(1) (not yet in force). However, s 45(1) (not yet in force) does not apply in relation to any proceedings to which the Children and Young Persons Act 1933 s 49 (as substituted and amended; prospectively further amended) (see PARAS 753 ante) applies: Youth Justice and Criminal Evidence Act 1999 s 45(2) (not yet in force).

4 Ibid s 45(3) (not yet in force). When deciding whether to make a direction under s 45(3) (not yet in force) in relation to a person, or an excepting direction under s 45(4) (not yet in force) (see the text and notes 13-15 infra) or s 45(5) (not yet in force) (see the text and notes 16-17 infra) by virtue of which the restrictions imposed by a direction under s 45(3) (not yet in force) would be dispensed with (to any extent) in relation to a person, the court or, as the case may be, the appellate court must have regard to the welfare of that person: s 45(6) (not yet in force). For the purposes of s 45(3) (not yet in force), any reference to a person concerned in the proceedings is to a person against or in respect of whom the proceedings are taken, or who is a witness in the proceedings: s 45(7) (not yet in force).

5 I.e. a direction under ibid s 45(3) (not yet in force). A direction under s 45(3) (not yet in force) may be revoked by the court or an appellate court: s 45(9) (not yet in force).

6 I.e. if their inclusion in any publication is likely to have the result mentioned in ibid s 45(3) (not yet in force): see the text and note 4 supra.

7 Ibid s 45(8) (not yet in force).

8 Ibid s 45(8)(a) (not yet in force).

9 Ibid s 45(8)(b) (not yet in force).

10 Ibid s 45(8)(c) (not yet in force).

11 Ibid s 45(8)(d) (not yet in force).

12 Ibid s 45(8)(e) (not yet in force).

13 For these purposes 'appellate court', in relation to any proceedings in a court, means a court dealing with an appeal, including an appeal by way of case stated, arising out of the proceedings or with any further appeal: ibid s 45(11) (not yet in force).

14 See note 5 supra.

15 Youth Justice and Criminal Evidence Act 1999 s 45(4) (not yet in force). See also note 4 supra. An excepting direction may be given at the time the direction under s 45(3) (not yet in force) (see the text and note 4 supra) is given or subsequently, and may be varied or revoked by the court or an appellate court: s 45(10) (not yet in force).

16 See note 5 supra.

17 Youth Justice and Criminal Evidence Act 1999 s 45(5) (not yet in force). However, no excepting direction may be given under s 45(5) (not yet in force) by reason only of the fact that the proceedings have been determined in any way or have been abandoned: s 45(5) (not yet in force). See also note 4 supra.

## **UPDATE**

### **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(x) Decision of the Court/757. Consultation by justices with justices' clerks and legal advisers.

## **(x) Decision of the Court**

### **757. Consultation by justices with justices' clerks and legal advisers.**

A justices' clerk<sup>1</sup> is responsible for: (1) the legal advice tendered to the justices within the area; (2) the performance of any of the functions set out below by any member of his staff acting as legal adviser; (3) ensuring that competent advice is available to justices when the justices' clerk is not personally present in court; and (4) the effective delivery of case management and the reduction of unnecessary delay<sup>2</sup>.

Where a person other than the justices' clerk (a 'legal adviser'), who is authorised to do so, performs any of the functions in relation to advising justices<sup>3</sup> to he will have the same responsibilities as the justices' clerk<sup>4</sup>. The legal adviser may consult the justices' clerk or other person authorised by the justices' clerk for that purpose before tendering advice to the bench. If the justices' clerk or that person gives any advice directly to the bench, he should give the parties or their advocates an opportunity of repeating any relevant submissions prior to the advice being given<sup>5</sup>.

It is the responsibility of the legal adviser to provide the justices with any advice they require properly to perform their functions whether or not the justices have requested that advice, on: (a) questions of law<sup>6</sup>; (b) questions of mixed law and fact<sup>7</sup>; (c) matters of practice and procedure; (d) the range of penalties available; (e) any relevant decisions of the superior courts or other guidelines; (f) other issues relevant to the matter before the court; and (g) the appropriate decision-making structure to be applied in any given case<sup>8</sup>. In addition to advising the justices, it is the legal adviser's responsibility to assist the court, where appropriate, as to the formulation of reasons and the recording of those reasons<sup>9</sup>.

A justices' clerk or legal adviser must not play any part in making findings of fact but may assist the bench by reminding them of the evidence, using any notes of the proceedings for this purpose<sup>10</sup>. They may ask questions of witnesses and the parties in order to clarify the evidence and any issues in the case<sup>11</sup>. A legal adviser has a duty to ensure that every case is conducted fairly<sup>12</sup>.

When advising the justices, the justices' clerk or legal adviser, whether or not previously in court, should ensure that he is aware of the relevant facts, and should provide the parties with

the information necessary to enable the parties to make any representations they wish as to the advice before it is given<sup>13</sup>.

At any time, justices are entitled to receive advice to assist them in discharging their responsibilities<sup>14</sup>. If they are in any doubt as to the evidence which has been given, they should seek the aid of their legal adviser, referring to his notes as appropriate<sup>15</sup>. This should ordinarily be done in open court<sup>16</sup>. Where the justices request their adviser to join them in the retiring room, this request should be made in the presence of the parties in court<sup>17</sup>. Any legal advice given to the justices other than in open court should be clearly stated to be provisional and the adviser should subsequently repeat the substance of the advice in open court and give the parties an opportunity to make any representations they wish on that provisional advice<sup>18</sup>. The legal adviser should then state in open court whether the provisional advice is confirmed or if it is varied the nature of the variation<sup>19</sup>. The clerk must not reveal any part of the justices' deliberations<sup>20</sup>.

1 As to justices' clerks see PARA 631 et seq ante.

2 *Practice Note (Magistrates: Clerk and Authorised Legal Adviser)* [2000] 4 All ER 895, [2000] 1 WLR 1886. See also *Practice Direction (Justices Clerk)* [1953] 2 All ER 1306, [1953] 1 WLR 1416.

3 I.e. the functions referred to in *Practice Note (Magistrates: Clerk and Authorised Legal Adviser)* [2000] 4 All ER 895, [2000] 1 WLR 1886.

4 *Practice Note (Magistrates: Clerk and Authorised Legal Adviser)* [2000] 4 All ER 895, [2000] 1 WLR 1886.

5 *Practice Note (Magistrates: Clerk and Authorised Legal Adviser)* [2000] 4 All ER 895, [2000] 1 WLR 1886.

6 I.e. including European Court of Human Rights jurisprudence and those matters set out in the Human Rights Act 1998 s 2(1) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS).

7 The clerk may advise justices on the evidence given as to the law: *R v Lower Munslow Justices, ex p Pudge* [1950] 2 All ER 756, DC. It is often difficult to disentangle law from fact, and a discussion on law must have regard to the facts to which the law is to be applied: *R v Welshpool Justices, ex p Holley* [1953] 2 QB 403, [1953] 2 All ER 807, DC. There is hardly a decision which falls to be made which is not mixed law and fact: *R v Consett Justices, ex p Postal Bingo Ltd* [1967] 2 QB 9, [1967] 1 All ER 605, DC, per Lord Parker CJ.

8 *Practice Note (Magistrates: Clerk and Authorised Legal Adviser)* [2000] 4 All ER 895, [2000] 1 WLR 1886.

9 *Practice Note (Magistrates: Clerk and Authorised Legal Adviser)* [2000] 4 All ER 895, [2000] 1 WLR 1886.

10 *Practice Note (Magistrates: Clerk and Authorised Legal Adviser)* [2000] 4 All ER 895, [2000] 1 WLR 1886.

11 *Practice Note (Magistrates: Clerk and Authorised Legal Adviser)* [2000] 4 All ER 895, [2000] 1 WLR 1886.

12 *Practice Note (Magistrates: Clerk and Authorised Legal Adviser)* [2000] 4 All ER 895, [2000] 1 WLR 1886. The legal adviser is under a duty to assist unrepresented parties to present their case, but must do so without appearing to become an advocate for the party concerned: *Practice Note (Magistrates: Clerk and Authorised Legal Adviser)* [2000] 4 All ER 895, [2000] 1 WLR 1886.

13 *Practice Note (Magistrates: Clerk and Authorised Legal Adviser)* [2000] 4 All ER 895, [2000] 1 WLR 1886.

14 *Practice Note (Magistrates: Clerk and Authorised Legal Adviser)* [2000] 4 All ER 895, [2000] 1 WLR 1886.

15 *Practice Note (Magistrates: Clerk and Authorised Legal Adviser)* [2000] 4 All ER 895, [2000] 1 WLR 1886.

16 *Practice Note (Magistrates: Clerk and Authorised Legal Adviser)* [2000] 4 All ER 895, [2000] 1 WLR 1886.

17 *Practice Note (Magistrates: Clerk and Authorised Legal Adviser)* [2000] 4 All ER 895, [2000] 1 WLR 1886. See also *R v Barry (Glamorgan) Justices, ex p Kashim* [1953] 2 All ER 1005, [1953] 1 WLR 1320, DC (conviction quashed where clerk retired with the justices although they only had to consider a question of fact); *R v Guildford Justices, ex p Harding* (1981) 145 JP 174; *R v Birmingham Magistrates, ex p Ahmed* [1995] Crim LR 503, DC (no justification for clerk to retire with the justices where his assistance on a point of law not required); *R v Stafford Borough Justices, ex p Ross* [1962] 1 All ER 540, [1962] 1 WLR 456, DC (conviction quashed where the clerk handed the justices a note containing argument on the facts); *R v Welshpool Justices, ex p Holley*

[1953] 2 QB 403, [1953] 2 All ER 807, DC (conviction was not quashed where clerk, having been called into the justices' room to advise the justices on the law, remained whilst they discussed the facts).

The performance of a legal adviser may be appraised by a person authorised by the magistrates' courts committee to do so and for that purpose the appraiser may be present in the justices' retiring room: *Practice Note (Magistrates: Clerk and Authorised Legal Adviser)* [2000] 4 All ER 895, [2000] 1 WLR 1886. The content of the appraisal is confidential, but the fact that an appraisal has taken place, and the presence of the appraiser in the retiring room, should be briefly explained in open court: *Practice Note (Magistrates: Clerk and Authorised Legal Adviser)* [2000] 4 All ER 895, [2000] 1 WLR 1886.

18 *Practice Note (Magistrates: Clerk and Authorised Legal Adviser)* [2000] 4 All ER 895, [2000] 1 WLR 1886.

19 *Practice Note (Magistrates: Clerk and Authorised Legal Adviser)* [2000] 4 All ER 895, [2000] 1 WLR 1886. See also *Re S (Minors) (Contact)* [1993] 2 FCR 325 (where the clerk cites fresh cases to the justices in their retirement the justices should return to court to allow further argument); *R v Eccles Justices, ex p Farrelly* (1992) 157 JP 77, DC (where the clerk speaks to the justices after they have returned to court which causes them to retire further, the clerk should give the parties an explanation).

20 *Hudson v Hudson* [1965] 2 All ER 82, [1965] 1 WLR 567, DC.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### 757 Consultation by justices with justices' clerks and legal advisers

NOTE 2--See also Magistrates' Courts Rules 1981, SI 1981/552 r 3A (added by SI 2009/3362), which confers on magistrates' courts explicit case management powers in relation to civil proceedings.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(x) Decision of the Court/758. Determination of decision.

### 758. Determination of decision.

The decision of a magistrates' court is determined by the votes of the majority of justices adjudicating, the chairman<sup>1</sup> having the same right to vote as the other justices present, but having no casting vote. Where three justices are sitting they are under a duty to come to a decision and may not order the case to be heard by another bench<sup>2</sup>. Where the justices are equally divided, the case must be adjourned and reheard by a court constituted, it is recommended, of an unequal number of justices<sup>3</sup>.

The court is entitled to take time or to adjourn before reaching its decision<sup>4</sup>. In criminal proceedings there is additionally power to defer sentence for up to six months after conviction for the purpose of enabling the court or any other court to which it falls to deal with him to have regard in the offender's conduct after conviction, including, where appropriate, the making by him of reparation for his offence, and to any change in circumstances<sup>5</sup>.

1 As to chairmanship of the bench see PARA 595 et seq ante.

2 *R v Bridgend Justices, ex p Randall* [1975] Crim LR 287, DC. See also *R v Bromley Justices, ex p Haymills (Contractors) Ltd* (1984) 148 JP 363, [1984] Crim LR 235, DC.

3 *Bagg v Colquhoun* [1904] 1 KB 554, DC. See also *R v Ashplant* (1888) 52 JP Jo 474, DC; *Ex p Evans* [1894] AC 16, HL; *Barnsley v Marsh* [1947] KB 672, [1947] 1 All ER 874, DC; *R v Redbridge Justices, ex p Ram* [1992] QB 384, [1992] 1 All ER 652, 156 JP 203, DC (duty to adjourn is obligatory and the accused has no right to make representations against adjournment). This applies also on inquiry by examining justices: *R v Hertfordshire Justices, ex p Larsen* [1926] 1 KB 191, DC. If, however, the court does not adjourn the hearing, the information must be dismissed (*R v Ashplant* supra; see also *Kinnis v Graves* (1898) 67 LQB 583, DC), but in civil cases it is doubtful whether the complaint should be dismissed (see *R v Wardle and Harton Coal Co, ex p Burrows* (1898) 14 TLR 424, DC). See *R v Thomas, ex p O'Hare* [1914] 1 KB 32, DC, where a stipendiary magistrate and a justice heard the case and differed in their views, and the stipendiary magistrate announced his own decision to convict, the justice assenting to his adjudicating alone, the conviction was upheld. As to informations and complaints see PARA 681 ante.

4 See the Magistrates' Courts Act 1980 s 10 (as amended), s 54; and PARA 707 ante. As to the power in criminal cases to adjourn after conviction (as distinct from the power to defer sentence: see the text and note 4 infra), see the Magistrates' Courts Act 1980 s 10(3); and PARA 711 ante.

5 See the Powers of Criminal Courts (Sentencing) Act 2000 s 1; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 22, where the power, which applies equally to the Crown Court and to magistrates' courts, is discussed in relation to the Crown Court.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(x) Decision of the Court/759. Specialised knowledge.

### 759. Specialised knowledge.

The general rule is that magistrates must come to their decision only on the evidence presented to them in court<sup>1</sup>. However, they may make use of their local knowledge<sup>2</sup>. A justice who has specialised knowledge may use it to interpret the evidence himself, but he should not press his views unduly on his fellow justices, nor should he give contradictory evidence to them<sup>3</sup>.

1 Justices have a discretion to visit the scene of an offence but should be accompanied by the parties or their representatives in case they should wish to comment on any matters which may arise or correct any matter on which the justices were making a mistake: *Parry v Boyle* (1986) 83 Cr App Rep 310, [1986] Crim LR 551, DC; *R v Ely Justices, ex p Burgess* (1992) 157 JP 484, [1992] Crim LR 888, DC. It is irregular for a justice to pay a personal and unofficial visit to the scene of the alleged offence: *Telfer and Telfer v DPP* (1994) 160 JP 512, DC.

2 See *Ingram v Percival* [1969] 1 QB 548, [1968] 3 All ER 657, DC, where justices were held entitled to use their personal knowledge of local tides. Justices may use their knowledge that a journey in question must inevitably have involved passage over public roads (*Borthwick v Vickers* [1973] RTR 390, DC), but the private knowledge of one member of the bench as to the use to which a car park was put on a particular occasion cannot be a substitute for evidence (*Williams v Boyle* [1963] Crim LR 204, DC), nor should justices conduct their own tests in the retiring room (*R v Tiverton Justices, ex p Smith* (1980) 145 JP 177). See also *Bowman v DPP* (1990) 154 JP 524. As to the precision of local knowledge necessary to support a criminal conviction see *Norbrook Laboratories Ltd v Health and Safety Executive* [1998] EMLR 207, DC.

3 *Wetherall v Harrison* [1976] QB 773, [1976] 1 All ER 241, DC, where it was held not to be improper for a justice who was a doctor to give his views in the retiring room as to whether the defendant had had a fit, and where Lord Widgery CJ expressed the view that the position with regard to specialised knowledge differs as regards judges and magistrates; the former can be expected to exclude certain factors from his consideration while the latter cannot.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(x) Decision of the Court/760. Postponement of decision.

#### 760. Postponement of decision.

Where two informations<sup>1</sup> are laid against the same defendant, the court may postpone the announcement of its decision on the first information until after it has heard the second, but only on condition that it applies the evidence in each case to that case alone<sup>2</sup>.

1 As to informations see PARA 681 ante.

2 *R v Fry etc Justices and Stoker, ex p Masters* (1898) 67 LJQB 712, DC; *Hamilton v Walker* [1892] 2 QB 25, DC (more completely reported in 56 JP 583); *Parker v Sutherland* (1917) 86 LJB 1052, DC; *Taylor's Central Garages (Exeter) Ltd v Roper* [1951] 2 TLR 284, DC.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(x) Decision of the Court/761. The decision.

#### 761. The decision.

On the summary trial of an information<sup>1</sup>, the magistrates' court<sup>2</sup>, after hearing the evidence and the parties<sup>3</sup>, must convict the accused or dismiss the information<sup>4</sup>. Where, however, the accused pleads guilty the court may convict him without hearing evidence<sup>5</sup>. Where on the summary trial of an information for an offence triable either way<sup>6</sup> the court dismisses the information, the dismissal of the information is of the same effect as the acquittal would have been if the case had been tried on indictment<sup>7</sup>.

Similarly, on the hearing of a complaint<sup>8</sup>, the court, after hearing the evidence and the parties, must make the order for which the complaint is made or dismiss the complaint<sup>9</sup>. Where, however, the complaint is for an order for the payment of a sum recoverable summarily as a civil debt<sup>10</sup>, or for the variation of the rate of any periodical payments ordered by a magistrates' court to be made, or for such other matter as may be prescribed<sup>11</sup>, the court may make the order with the consent of the defendant without hearing evidence<sup>12</sup>.

To ensure that there is a fair trial<sup>13</sup> in both civil and criminal proceedings, the court must give reasons for its judgement although the extent of the duty to give reasons will vary according to the nature of the decision<sup>14</sup>.

1 As to informations see PARA 681 ante.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 If the accused or those representing him have not stated expressly that no evidence is to be called on behalf of the defence, the magistrates should ask: 'Are you calling no evidence?': *R v Birkenhead Justices, ex p Fisher* [1962] 3 All ER 837, [1962] 1 WLR 1410, DC. The prosecution should be given an opportunity to call such evidence as it has. Accordingly justices should not have dismissed a case on an application to adjourn where the prosecution had one witness missing: *R v Milton Keynes Justices, ex p DPP* [1991] Crim LR 712, DC. There is no power to dismiss an information without hearing any evidence, on the basis that it would be unjust to continue: *R v Birmingham Justices, ex p Lamb* [1983] 3 All ER 23, DC. See also *R v Dorchester Magistrates' Court, ex p DPP* (1989) 154 JP 211 (dismissal of information without hearing evidence on a defence submission that police evidence tainted). A decision to acquit without allowing the prosecution to present its case on the evidence available is a nullity: *Harrington v Roots* [1984] 2 All ER 474, HL. See also *R v Romsey Justices, ex p Gail* (1992) 156 JP 567, DC (chairman of justices prepared statement during trial which would be read out should defendants be convicted; convictions quashed as fair trial should be seen to be done).

4 Magistrates' Courts Act 1980 s 9(2). A magistrates' court has no power to convict a person for a lesser offence when he has been charged with a more serious offence, even if the ingredients of the lesser offence were elements of the offence charged: *Lawrence v Same* [1968] 2 QB 93, [1968] 1 All ER 1191, DC. Cf the provision for alternative verdicts in the Road Traffic Offenders Act 1988 s 24 (as amended) (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 1044). As to the power of remand before sentence see the Magistrates' Courts Act 1980 s 10 (as amended), the Powers of Criminal Courts (Sentencing) Act 2000 s 11; and PARA 723 ante. Statements as to previous convictions made to the justices to enable them to fix the penalty must be given in open court in the hearing of the defendant (see PARA 764 post), as also must evidence as to character: *R v Bodmin Justices, ex p Mc Ewen* [1947] KB 321, [1947] 1 All ER 109, DC. As to evidence of character generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1502 et seq. The court is recommended to announce a decision to convict before inquiring about the accused's previous convictions: see *Davies v Griffiths* [1937] 2 All ER 671, DC. The entries to be made in the court register must show clearly of what offence there was a conviction or dismissal and the date of the offence: see the Magistrates' Courts Rules 1981, SI 1981/552, r 66(9), (10); Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Form 148 (amended by SI 2001/615). As to the duty to keep the register see PARA 628 ante. See PARA 505 note 12 ante.

5 See the Magistrates' Courts Act 1980 s 10(3); and PARA 711 ante. A general course of procedure where the accused pleads guilty has not been enacted for magistrates' courts, and superior courts are reluctant to lay down particular rules of practice: see *R v Grimsby Recorder, ex p Purser* [1951] 2 All ER 889 at 890-891, DC, per Lord Goddard CJ. Evidence heard after conviction may be sworn or unsworn, but if the accused says that the facts have not been correctly stated, the justices would be well advised to have the informant sworn: *R v Grimsby Recorder, ex p Purser* supra at 890-891 per Lord Goddard CJ.

6 For the meaning of 'offence triable either way' see PARA 653 ante.

7 Magistrates' Courts Act 1980 s 27. A Divisional Court will, however, hear an appeal by the prosecutor that dismissal by the magistrates' court was wrong in law: cf *Ruse v Read* [1949] 1 KB 377, [1949] 1 All ER 398, DC; *Afford v Pettit* (1949) 113 JP 433, DC. Any depositions that have been taken must be preserved for a period of three years: see the Magistrates' Courts Rules 1981, SI 1981/552, r 22 (amended by SI 2001/610).

8 As to complaints see PARA 681 ante.

9 Magistrates' Courts Act 1980 s 53(2). In the application of the Magistrates' Courts Act 1980 to civil contempt proceedings under s 63(3) (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq), where the proceedings are taken of the court's own motion, s 53(2) applies as if a complaint had been made against the person against whom the proceedings are taken: Contempt of Court Act 1981 s 17(2), Sch 3.

10 As to civil debt proceedings see PARA 826 post.

11 le prescribed by rules made under the Magistrates' Courts Act 1980 s 144 (as amended) (see PARA 588 ante): see s 150(1).

12 Ibid s 53(3). The defendant's consent must be entered in the register: Magistrates' Courts Rules 1981, SI 1981/552, r 66(8).

13 le under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) Cmd 8969) art 6(1): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 134 et seq.

14 See eg *Helle v Finland* (1997) 26 EHRR 159. Justices are not obliged to state reasons in the form of a judgment or in any elaborate form: *McKerry v Teesdale and Wear Valley Justices* (2000) 164 JP 355, DC. See also *R (on the application of McGowan) v Brent Justices* [2001] EWHC Admin 814, 165 JP Jo 834, DC (what was necessary was for the justices to show that they had put their mind to the ingredients of the offence and had appreciated the defendant's state of mind; essence of the exercise was to inform the defendant why he had been found guilty); *R (on the application of Pace) v West Wiltshire Justices* [2002] EWHC Admin 31, [2002] All ER (D) 13 (Jan), DC (application for judicial review of decision on the order in which two trials were to be conducted on the grounds that inadequate reasons for the decision were given dismissed on the facts). More complex cases will require some analysis, however brief, of the evidence for it to be possible on review to decide whether the conclusions reached were rational: *R (on the application of Howson-Ball) v Crown Court at Canterbury* (10 November 2000) Lexis, Enggen Library, Cases File, DC. It is unnecessary for justices to give reasons for committing for sentence: *R v Wirral Magistrates' Court, ex p Jermyn* [2001] Crim LR 45, DC.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### 761 The decision

NOTE 4--SI 1981/553 Sch 2 Form 148 revoked: SI 2003/1236.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(x) Decision of the Court/762. Altering the decision.

### 762. Altering the decision.

The general rule is that a finding of guilt, once pronounced, may not be altered, for the magistrates are *functi officio*<sup>1</sup>. However, where a person is convicted<sup>2</sup> by a magistrates' court<sup>3</sup> and it subsequently appears to the court that it would be in the interests of justice<sup>4</sup> that the case should again be heard by different justices, the court may so direct<sup>5</sup>. This power is not exercisable in relation to a conviction if:

284 (1) the Crown Court has determined an appeal against the conviction, or any sentence or order imposed or made by the magistrates' court when dealing with the offender in respect of the conviction<sup>6</sup>; or

285 (2) the High Court has determined a case stated for the opinion of that court on any question arising in any proceeding leading to or resulting from the conviction<sup>7</sup>.



Similarly, a magistrates' court may if it appears in the interests of justice to do so, vary or rescind a sentence or other order imposed or made by it when dealing with an offender<sup>8</sup>, including the replacement of an invalid sentence or order<sup>9</sup>. This power is not exercisable in relation to any sentence or order imposed or made by it when dealing with an offender if:

286 (a) the Crown Court has determined an appeal against (i) that sentence or order<sup>10</sup>; (ii) the conviction in respect of which that sentence or order was imposed or made<sup>11</sup>; or (iii) any other sentence or order imposed or made by the magistrates' court when dealing with the offender in respect of that conviction, including a sentence or order replaced by that sentence or order<sup>12</sup>; or

287 (b) the High Court has determined a case stated for the opinion of that court on any question arising in any proceeding leading to or resulting from the imposition or making of the sentence or order<sup>13</sup>.

Where a sentence or order is so varied, the sentence or other order, as so varied, takes effect from the beginning of the day on which it was originally imposed or made, unless the court otherwise directs<sup>14</sup>.

These powers are in addition to the limited common law powers of justices to alter their decision at the same sitting of the court<sup>15</sup>.

1 *R v Campbell, ex p Hoy* [1953] 1 QB 585 at 590, [1953] 1 All ER 684 at 685, DC, per Lord Goddard CJ; *R v Manchester Justices, ex p Lever* [1937] 2 KB 96, [1937] 3 All ER 4, DC; *R v Essex Justices, ex p Final* [1963] 2 QB 816, [1962] 3 All ER 924, DC.

2 *Ie* where a defendant has been convicted following a plea of not guilty or the hearing has proceeded in his absence under the Magistrates' Courts Act 1980 s 11(1): see PARA 701 ante.

3 For the meaning of 'magistrates' court' see PARA 583 ante.

4 The purpose of this power is to rectify mistakes and it is not to be exercised in situations which are not akin to a mistake such as to enable a defendant to obtain a rehearing where he could not appeal to the Crown Court by reason of an unequivocal plea of guilty: *R v Croydon Youth Court, ex p DPP* [1997] 2 Cr App Rep 411, DC. However, justices have a broad discretion and may in appropriate circumstances re-open a case where a defendant arrived late at court (*R v Gwent Magistrates' Court, ex p Carey* (1996) 160 JP 613, DC; cf *R v Camberwell Green Magistrates' Court, ex p Ibrahim* (1983) 148 JP 400, DC) and may review the issue of a warrant overnight (*R v Sheffield City Justices, ex p Foster* (1999) Times, 2 November, DC).

5 Magistrates' Courts Act 1980 s 142(2) (s 142(1), (2), (3) amended by the Criminal Appeal Act 1995 s 26). The conviction and any consequential sentence or order are then of no effect and the Magistrates' Courts Act 1980 s 10(4) (as amended) (remand where trial adjourned) (see PARA 711 ante) applies as if the trial had been adjourned: s 142(3) (as so amended).

6 *Ibid* s 142(2A)(a) (s 142(1A), (2A) added by the Criminal Appeal Act 1995 s 26).

7 Magistrates' Courts Act 1980 s 142(2A)(b) (as added: see note 6 supra).

8 The use of the term 'offender' indicates that the power to re-open only extends to cases where the defendant has been found guilty (*Coles v East Penwith Justices* (1998) 162 JP 687, DC) and prevents a bench from withdrawing the dismissal of a summons (*R v Gravesend Justices, ex p Dexter* [1977] Crim LR 298, DC). However, the term 'offender' will include a person made the subject of a hospital order under the Mental Health Act 1983 s 37(3) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 332) without convicting him where the court was satisfied he 'did the act': *R v Thames Magistrates' Court, ex p Ramadan* [1999] 1 Cr App Rep 386, 163 JP 428, DC.

9 See the Magistrates' Courts Act 1980 s 142(1) (as amended: see note 5 supra). 'Sentence or other order' does not include a dismissal and so s 142 (as amended) cannot be used to rectify an incorrect dismissal: *R v Leighton Buzzard Justices, ex p DPP* (1989) 154 JP 41, DC.

10 Magistrates' Courts Act 1980 s 142(1A)(a)(i) (as added: see note 6 supra).

11 *Ibid* s 142(1A)(a)(ii) (as added: see note 6 supra).

12 Ibid s 142(1A)(a)(iii) (as added: see note 6 supra).

13 Ibid s 142(1A)(b) (as added: see note 6 supra).

14 Ibid s 142(5).

15 In the following cases the courts have been held to have power to alter decisions made: *Jones v Williams* (1877) 46 LJMC 270 (conviction may be altered before it is formally drawn up); *R v Marsham, ex p Pethick Lawrence* [1912] 2 KB 362, DC (case may be reheard after conviction where there has been an irregularity sufficient to vitiate the earlier proceedings); *R v McNally* [1954] 2 All ER 372, [1954] 1 WLR 933, CCA (court has discretion to allow plea of guilty to be withdrawn before sentence has been pronounced (see PARA 726 ante). See also *Warne v Martin* [1954] Crim LR 936, DC; *R v Newcastle upon Tyne Justices, ex p Swales* [1972] RTR 57, (1971) 115 Sol Jo 949, DC (a genuine slip of the tongue may be corrected); *R v Warwick Quarter Sessions, ex p Patterson* (1971) 115 Sol Jo 484, DC (order made without jurisdiction substituted when error discovered).

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### 762 Altering the decision

NOTE 4--The failure of a court to appreciate a relevant fact which could influence a sentence will not necessarily give it the power to exercise jurisdiction under the 1980 Act s 142: *R (on the application of Holme) v Liverpool City Justices* [2004] EWHC 3131 (Admin), (2005) 169 JP 306 (failure to consider fully extent of injury to victim did not justify use of s 142). A decision that it would be in the interests of justice to set aside a liability order does not determine whether previous decisions of the court should be set aside, particularly when they have been made much earlier: *R (on the application of Newham LBC) v Stratford Magistrates' Court* [2008] EWHC 125 (Admin), (2009) 173 JP 30.

NOTE 9--See also *R (on the application of Morsby) v Tower Bridge Magistrates' Court* [2007] EWHC 2766 (Admin), (2007) 172 JP 155.

NOTE 15--See also *Liverpool CC v Pleroma Distribution Ltd* [2002] EWHC 2467 (Admin), [2003] RVR 34 (where justices unaware of request for adjournment, order made without jurisdiction); *R (on the application of Broxbourne BC) v North and East Hertfordshire Magistrates' Court* [2009] EWHC 695 (Admin), [2009] LLR 493, [2009] All ER (D) 96 (Apr) (common law power to re-open decision limited to decision made as a result of a substantial procedural error, defect or mishap).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(x) Decision of the Court/763. Reasons for the decision in family proceedings.

### 763. Reasons for the decision in family proceedings.

Rules<sup>1</sup> may provide for the recording by a magistrates' court<sup>2</sup> of reasons for a decision in such family proceedings<sup>3</sup> or class of family proceedings as may be prescribed, and for making available a copy of any record so made of the reasons to any person requesting a copy for the

purposes of an appeal against the decision or of deciding whether to appeal<sup>4</sup>. A copy of any such record is admissible as evidence of the reasons if it is certified by such officer of the court as may be prescribed<sup>5</sup>.

<sup>1</sup> The rules made under the Magistrates' Courts Act 1980 s 144 (as amended): see PARA 588 ante. In the exercise of this power the Family Proceedings Courts (Children Act 1989) Rules 1991, SI 1991/1395 (amended by SI 1994/3156; SI 2001/615; and SI 2001/818); and the Family Proceedings Courts (Matrimonial Proceedings etc) Rules 1991, SI 1991/1991 (amended by SI 1997/1894; SI 2001/615; and SI 2001/778) have been made.

Before the court makes an order in proceedings to which the rules apply, the justices' clerk must record in writing the names of the justices constituting the court and, in consultation with the justices, the reasons for the court's decision and any findings of fact: see the Family Proceedings Courts (Children Act 1989) Rules 1991, SI 1991/1395, r 21(5); Family Proceedings Courts (Matrimonial Proceedings etc) Rules 1991, SI 1991/1991, r 12(5). The court, when making an order or refusing an application, must state any findings of fact and the reasons for the court's decision: see the Family Proceedings Courts (Children Act 1989) Rules 1991, SI 1991/1395, r 21(6) (substituted by SI 1994/3156); Family Proceedings Courts (Matrimonial Proceedings etc) Rules 1991, SI 1991/1991, r 12(6). Similar requirements are imposed in respect of proceedings for the reciprocal enforcement of maintenance or recovery abroad of maintenance: see the Maintenance Orders (Facilities for Enforcement) Rules 1922, SR & O 1922/1355, r 6B, Schedule (both added by SI 1993/617; and amended by SI 2001/615); Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) Rules 1974, SI 1974/668, r 4C, Sch A1 (both added by SI 1993/617; and amended by SI 2001/615); Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Republic of Ireland) Rules 1975, SI 1975/286, r 4B, Sch A1 (both added by SI 1993/617; and amended by SI 2001/615); Magistrates' Courts (Recovery Abroad of Maintenance) Rules 1975, SI 1975/488, r 12, Sch 2 (added by SI 1993/617; and amended by SI 2001/615); Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Hague Convention Countries) Rules 1980, SI 1980/108, r 4B, Sch 1A (added by SI 1993/617; and amended by SI 2001/615). Justices must give their reasons when announcing their decision and may not defer stating their reasons and findings of fact to a later date: *Re K (Minors) (Justices' Reasons)* [1994] 1 FCR 616, [1993] Fam Law 615. Justices reasons must record the facts which were significant to the justices decision and salient considerations which have led them to their conclusion (*Hillingdon London Borough Council v H* [1993] 1 All ER 198, [1992] 2 FCR 299) and an assessment of the credibility and reliability of at least the most important witnesses (*Re H (A Minor) (Care Proceedings)* [1992] 2 FCR 330). For guidance on how to comply with the requirement to record justices reasons see *R(J) v Oxfordshire County Council* [1992] 3 All ER 660, [1992] 1 FLR 648.

<sup>2</sup> For the meaning of 'magistrates' court' see PARA 583 ante.

<sup>3</sup> For the meaning of 'family proceedings' see PARA 739 ante.

<sup>4</sup> Magistrates' Courts Act 1980 s 74(1) (amended by the Children Act 1989 s 92, Sch 11 para 8).

<sup>5</sup> Magistrates' Courts Act 1980 s 74(2). The prescribed certifying officer is the justices' chief executive for the magistrates' court concerned: Magistrates' Courts Rules 1981, SI 1981/552, r 38 (amended by SI 2001/610); Magistrates' Courts Act 1980 s 154, Sch 8 para 5. As to the justices' chief executive see PARA 624 et seq ante.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### 763 Reasons for the decision in family proceedings

NOTE 1--SR & O 1922/1355 Schedule, SI 1974/668 Sch A1, SI 1975/286 Sch A1, SI 1975/488 Sch 2, SI 1980/108 Sch 1A, SI 1991/1395 all further amended: SI 2005/617. SI 1991/1991 further amended: SI 2005/617, SI 2007/1628, SI 2009/2025. SI 1991/1395 further amended: SI 2007/2188, SI 2008/2858, SI 2009/637, SI 2009/2025.

NOTE 4--Magistrates' Courts Act 1980 s 74(1) amended: Courts Act 2003 Sch 8 para 217.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(x) Decision of the Court/764. Previous convictions.

## **764. Previous convictions.**

After the accused has been convicted in his presence of an offence, a magistrates' court may hear a statement of previous convictions recorded against him<sup>1</sup>. This statement must be made in open court, and in the presence of the accused, so as to give him an opportunity of challenging or explaining a previous conviction<sup>2</sup>. If the accused disputes any conviction mentioned in the statement, either the court must state that it ignores it, or the matter must be adjourned for proof<sup>3</sup>.

After the conviction of the accused of a summary offence<sup>4</sup>, a magistrates' court<sup>5</sup>, other than a youth court<sup>6</sup>, may, in certain circumstances<sup>7</sup>, take notice of a previous conviction for a summary offence even where the accused is not present in person, and may take account of that conviction as if he had appeared and admitted it<sup>8</sup>. To enable this to be done, it must be proved to the court's satisfaction, on oath or in the prescribed<sup>9</sup> manner, that not less than seven days previously a notice was served on the accused in the prescribed form and manner<sup>10</sup> specifying any alleged previous conviction of the accused of a summary offence proposed to be brought to the notice of the court in the event of his conviction of the offence charged<sup>11</sup>.

1 *R v Elley* (1921) 85 JP 144, CCA; *R v Campbell* (1911) 75 JP 216, CCA. Although no reference should be made in open court to spent convictions (as to which see the Rehabilitation of Offenders Act 1974 s 1(1); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 661), all previous convictions should be listed on the statement of the defendant's record provided to the court for the purpose of sentence, but those which are spent should, so far as practicable, be marked as such: *Practice Note* [1975] 2 All ER 1072, [1975] 1 WLR 1065, DC.

2 *R v Turner* (1924) 18 Cr App Rep 161, CCA; *Hastings v Ostle* (1930) 94 JP 209, DC; *Hill v Tothill* [1936] WN 126, DC; *R v East Kerrier Justices, ex p Mundy* [1952] 2 QB 719, [1952] 2 All ER 144, DC.

3 *R v Butterwasser* [1947] 2 All ER 415 at 417, CCA, per Lord Goddard CJ; and see *Martin v White* [1910] 1 KB 665, DC.

4 For the meaning of 'summary offence' see PARA 653 ante.

5 For the meaning of 'magistrates' court' see PARA 583 ante.

6 As to youth courts see PARAS 608-611, 746-756 ante.

7 See the text and notes 9-11 infra.

8 See the Magistrates' Courts Act 1980 s 104 (amended by the Criminal Justice Act 1991 ss 70, 100, Sch 11 para 40(1), (2)(n)).

9 I.e. prescribed by rules made under the Magistrates' Courts Act 1980 s 144 (as amended) (see PARA 588 ante): see s 150(1).

10 I.e. the form prescribed by the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Forms 29, 30. Service of the form may be effected by delivering it to the person to whom it is directed or by sending it by post in a registered letter or by recorded delivery service, or by first class post addressed to him at his last known or usual place of abode: Magistrates' Courts Rules 1981, SI 1981/552, r 72 (amended by SI 1992/729). See PARA 505 note 12 ante.

11 Magistrates' Courts Act 1980 s 104.

## **UPDATE**

### **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(x) Decision of the Court/765. Records of adjudications of the court.

### **765. Records of adjudications of the court.**

A minute or memorandum of every adjudication of a magistrates' court must be entered in the court register<sup>1</sup>. Unless required for an appeal or some other legal purpose, no conviction or order need be drawn up, but if it is drawn up it must be in the appropriate prescribed form<sup>2</sup>. Where it relates to an offence which could not be tried summarily without the consent of the accused, it must contain a statement of that consent having been given<sup>3</sup>. The offence must be described with certainty and reasonable particularity<sup>4</sup>.

An order of dismissal of a complaint<sup>5</sup> must be drawn up if it is required for an appeal or other legal purpose<sup>6</sup>.

<sup>1</sup> Magistrates' Courts Rules 1981, SI 1981/552, r 66(1)(a) (amended by SI 2001/610). The justices' chief executive must keep a register in the form prescribed by the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Form 148 (amended by SI 2001/615), in which to record such minutes: see the Magistrates' Courts Rules 1981, SI 1981/552, r 66(2). As to the duty to keep the register see PARA 628 ante. See PARA 505 note 12 ante. As to entries relating to bail in criminal proceedings see PARA 718 note 5 ante. The register, or any document purporting to be an extract from it, and certified by the justices' chief executive as a true extract, is admissible in any legal proceedings as evidence of the proceedings of the court entered in the register: r 68. For the form of extract from the register see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, Sch 2 Form 154 (amended by SI 2001/615). Unless the order was made in his presence and the warrant issued on that occasion, the defendant must be served with a copy of the minute of the order before a warrant of commitment, or a warrant of distress for failure to pay a sum enforceable as a civil debt, may be issued: Magistrates' Courts Rules 1981, SI 1981/552, r 53(1), (2). Service is by delivery or post: see r 53(3). For the form of order see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, Sch 2 Form 106. As to whether computerised court sheets containing all outstanding charges should be put before the magistrates hearing a charge see *R v Weston-Super-Mare Justices, ex p Shaw* [1987] QB 640, [1987] 1 All ER 255, DC; and PARA 560 note 12 ante.

<sup>2</sup> Magistrates' Courts Rules 1981, SI 1981/552, r 16(1). For prescribed forms of conviction and order see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, Sch 2 Forms 38, 100, 101, 106. The High Court may direct a conviction to be drawn up: *R v Tabrum, ex p Dash* (1907) 71 JP 325, DC.

<sup>3</sup> Magistrates' Courts Rules 1981, SI 1981/552, r 16(2).

<sup>4</sup> *Smith v Moody* [1903] 1 KB 56, DC; *Smart v Wilkins* (1919) 83 JP 181, DC; *Pointon v Cox* (1926) 91 JP 33, DC.

<sup>5</sup> As to complaints see PARA 681 ante.

<sup>6</sup> Magistrates' Courts Rules 1981, SI 1981/552, r 16(1). For the form of dismissal see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, Sch 2 Form 101.

## **UPDATE**

### **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

## **765 Records of adjudications of the court**

NOTE 1--SI 1981/553 Sch 2 Forms 148, 154 revoked: SI 2003/1236. 'Court computer system' means a computer or computer system which is used to assist to discharge and record the business of the court: SI 1981/552 r 2 (definition added by SI 2003/1236). Words 'any document purporting to be' omitted: SI 1981/552 r 68 (amended by SI 2003/1236).

NOTE 2--Prescribed forms, cited, revoked: SI 2003/1236.

TEXT AND NOTE 3--SI 1981/552 r 16(2) revoked: SI 2003/1236.

NOTE 6--SI 1981/553 Sch 2 Form 101 revoked: SI 2003/1236.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(x) Decision of the Court/766. The doctrine of *functus officio*.

## **766. The doctrine of *functus officio*.**

The justices are *functi officio* where they have discharged all their judicial functions in a case<sup>1</sup>. Thus, in criminal proceedings they may not, save in certain specific circumstances<sup>2</sup>, re-open the case after sentencing the accused or after committing him to the Crown Court for sentence<sup>3</sup>.

1 See *R v Camberwell Green Magistrates' Court, ex p Brown* (1983) 4 FLR 767.

2 See PARAS 758, 762 ante.

3 *S (An Infant) v Manchester City Recorder* [1971] AC 481, [1969] 3 All ER 1230, HL; *R v Manchester Justices, ex p Lever* [1937] 2 KB 96, [1937] 3 All ER 4, DC; *R v Essex Justices, ex p Final* [1963] 2 QB 816, [1962] 3 All ER 924, DC; *R v Campbell, ex p Hoy* [1953] 1 QB 585, [1953] 1 All ER 684, DC; *R v McNally* [1954] 2 All ER 372, [1954] 1 WLR 993, CCA; *R v Muford and Lothingland Justices, ex p Harber* [1971] 2 QB 291, [1971] 1 All ER 81, DC. The Crown Court may however, on a committal for sentence entertain an application for change of plea: *R v Muford and Lothingland Justices, ex p Harber* supra; *R v Fareham Justices, ex p Long* [1976] Crim LR 269, DC; *R v Inner London Crown Court, ex p Sloper, R v Camberwell Green Magistrates, ex p Sloper* (1978) 69 Cr App Rep 1, DC. See also *R v Trafford Magistrates' Court, ex p Stott* (1988) 152 JP 633, DC (justices who had part-heard case and re-listed it before fresh bench in so doing disqualified themselves from continuing to hear case and were *functi officio*); *R v Ripon Liberty Justices, ex p Bugg* (1990) 155 JP 213, DC (justices remitting case to fresh bench to enable it to be heard continuously were *functi officio*); followed in *R v Birmingham Justices, ex p Shields* (1994) 158 JP 845 (justices had the power to order a retrial before a differently constituted bench where the chairman would have retired before the adjourned date of trial).

## **UPDATE**

### **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

## **766 The doctrine of *functus officio***

NOTE 3--See also *Steward v DPP* [2003] EWHC 2251 (Admin), [2004] 1 WLR 592, DC (defendant's solicitor identified an error after justices found there was no case to answer; justices not functus officio); and *R (on the application of O) v Stratford Youth Court* [2004] EWHC 1553 (Admin), (2004) JP Jo 717, DC (case dismissed where prosecution presented no evidence owing to failure of claimant and main witness to attend; justices functus officio even though complainant arrived minutes later and sought to have case reopened).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(xi) Costs and Fees/767. Defendant's costs.

## (xi) Costs and Fees

### 767. Defendant's costs.

Where: (1) an information<sup>1</sup> laid before a justice of the peace for any area, charging any person with an offence, is not proceeded with<sup>2</sup>; or (2) a magistrates' court<sup>3</sup> inquiring into an indictable offence<sup>4</sup> as examining justices<sup>5</sup> determines not to commit the accused for trial<sup>6</sup>; or (3) a magistrates' court dealing summarily with an offence dismisses the information<sup>7</sup>, that court or, in a case falling within head (1) above, a magistrates' court for that area, may make a defendant's costs order for his costs to be paid out of central funds<sup>8</sup>.

The cost of providing an interpreter who is required because of a defendant's lack of English must also be ordered to be paid out of central funds unless specifically disallowed<sup>9</sup>.

1 As to informations see PARA 681 ante.

2 Prosecution of Offences Act 1985 s 16(1)(a).

3 For the meaning of 'magistrates' court' see PARA 583 ante.

4 For the meaning of 'indictable offence' see PARA 653 ante.

5 As to the use of the expression 'examining justices' see PARA 524 note 9 ante.

6 Prosecution of Offences Act 1985 s 16(1)(b).

7 Ibid s 16(1)(c).

8 See ibid s 16(1). As to the award of defendant's costs out of central funds see further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2059. 'Central funds', in an enactment providing in relation to England and Wales for the payment of costs out of central funds, means money provided by Parliament: Interpretation Act 1978 s 5, Sch 1. For the meaning of 'England' see PARA 501 note 7 ante; and for the meaning of 'Wales' see PARA 501 note 7 ante.

As to the award of costs in criminal proceedings see *Practice Note* [1991] 2 All ER 924 (amended by *Practice Note* [1999] 4 All ER 436); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2059 et seq.

For circumstances in which an order for costs can be refused see *R v Birmingham Juvenile Court, ex p H* (1992) 156 JP 445, DC; *Mooney v Cardiff Magistrates' Court* (1999) 164 JP 220, DC; *R v South West Surrey Magistrates' Courts, ex p James* [2000] Crim LR 690, DC.

As to private prosecution costs see PARA 768 post; and as to wasted costs and costs against a legal representative see PARA 770 post.

9 See the Prosecution of Offences Act 1985 s 19(3)(b); and the Costs in Criminal Cases (General) Regulations 1986, SI 1986/1335, reg 16(1)(b). As to the trial of a person with insufficient command of English see CRIMINAL

LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1311. As to other payments from central funds see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARAS 2076-2085.

## **UPDATE**

### **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### **767-771 Costs and Fees**

For provision relating to the award of costs against third parties see Prosecution of Offences Act 1985 s 19B (added by Courts Act 2003 s 93); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2058.

### **767 Defendant's costs**

NOTE 9--SI 1986/1335 reg 16(1) amended: SI 2009/2720.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(xi) Costs and Fees/768. Prosecution costs.

### **768. Prosecution costs.**

In any proceedings<sup>1</sup> in respect of an indictable offence<sup>2</sup> a magistrates' court<sup>3</sup> has power to order the payment out of central funds<sup>4</sup> of such amount as the court considers reasonably sufficient to compensate the prosecutor for any expenses properly incurred by him in the proceedings<sup>5</sup> except that no such order may be made in favour of<sup>6</sup> (1) a public authority<sup>7</sup>; or (2) a person acting on behalf of a public authority, or in his capacity as an official appointed by such an authority<sup>8</sup>.

1 'Proceedings' includes proceedings in any court below, and in relation to the determination of an appeal by any court, any application made to that court for leave to bring the appeal: Prosecution of Offences Act 1985 s 21(1).

2 For the meaning of 'indictable offence' see PARA 653 ante.

3 For the meaning of 'magistrates' court' see PARA 583 ante.

4 For the meaning of 'central funds' see PARA 767 note 8 ante.

5 Prosecution of Offences Act 1985 s 17(1). As to a defendant's costs see PARA 767 ante.

6 Ibid s 17(2).

7 Ibid s 17(2)(a). 'Public authority' means: (1) a police force within the meaning of s 3 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1160); (2) the Crown Prosecution Service or any other government department; (3) a local authority or other authority or body constituted for purposes of (a) the public service or of local government; or (b) carrying on under national ownership any industry or undertaking or part of an industry or undertaking; or (4) any other authority or body whose members are appointed by Her Majesty or by any Minister of the Crown or government department or whose revenues consist wholly or mainly of money provided by Parliament: s 17(6). As to the Crown Prosecution Service see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1079.



8 Ibid s 17(2)(b).

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### 767-771 Costs and Fees

For provision relating to the award of costs against third parties see Prosecution of Offences Act 1985 s 19B (added by Courts Act 2003 s 93); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2058.

### 768 Prosecution costs

TEXT AND NOTE 5--Prosecution of Offences Act 1985 s 17(1) amended: Constitutional Reform Act 2005 Sch 9 para 41(3) (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(xi) Costs and Fees/769. Costs as between parties.

### 769. Costs as between parties.

On the hearing of a complaint<sup>1</sup>, a magistrates' court<sup>2</sup> has power in its discretion to make such order as to costs<sup>3</sup>: (1) on making the order for which the complaint is made, to be paid by the defendant to the complainant<sup>4</sup>; (2) on dismissing the complaint, to be paid by the complainant to the defendant<sup>5</sup>, as it thinks just and reasonable<sup>6</sup>. Where any person is convicted of an offence before a magistrates' court, the court may make such order as to the costs to be paid by the accused to the prosecutor as it considers just and reasonable<sup>7</sup>.

The amount of any sum so ordered to be paid on the hearing of a complaint<sup>8</sup> must be specified in the order, or order of dismissal<sup>9</sup>. The amount to be paid by the accused to the prosecutor in pursuance of an order as to the costs to be paid<sup>10</sup> must be specified in the order<sup>11</sup>. The amount to be paid is to be fixed by the justices themselves at the time they adjudicate<sup>12</sup>.

1 As to the hearing of complaints see PARA 681 et seq ante.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 Magistrates' Courts Act 1980 s 64(1). Section 64(1), (2) (as substituted) has effect subject to any other Act enabling a magistrates' court to order a successful party to pay the other party's costs: s 64(5).

Any reference to a sum adjudged to be paid by a conviction or order of a magistrates' court includes any costs, damages or compensation adjudged to be paid by the conviction or order of which the amount is ascertained by the conviction or order: s 150(3). The provisions of the Magistrates' Courts Act 1980 authorising a magistrates' court on conviction of an offender to pass a sentence or make an order instead of dealing with him in any other way must not be construed as taking away any power to order him to pay costs, damages or compensation: s 150(7).

In relation to civil proceedings, where any costs of a litigant in person have been ordered to be paid by any other party to the proceedings, the litigant may be allowed to recover sums in relation to work done by him,

and any expenses and losses incurred by him, in or in connection with the proceedings: see the Litigants in Person (Costs and Expenses) Act 1975 s 1(1); and the Litigants in Person (Costs and Expenses) (Magistrates' Courts) Order 2001, SI 2001/3438.

4 Magistrates' Courts Act 1980 s 64(1)(a). See note 3 supra.

5 Ibid s 64(1)(b). See note 3 supra.

6 Ibid s 64(1). See note 3 supra. Where proceedings under the Police Property Act 1897 are brought by way of complaint, there is power to make an order for costs under the Magistrates' Courts Act 1980 s 64, but not where proceedings are brought by way of application: *R v Uxbridge Justices, ex p Metropolitan Police Comr* [1981] QB 829, [1981] 3 All ER 129, CA. See also *R v Tottenham Justices, ex p Joshi* [1982] 2 All ER 507, [1982] 1 WLR 631, DC.

However, if the complaint is for an order for the periodical payment of money, or for the revocation, revival, variation or enforcement of such an order, the court may, whatever adjudication it makes, order either party to pay the whole or any part of the other's costs: Magistrates' Courts Act 1980 s 64(1) proviso. As to orders for periodical payments see PARAS 820 et seq post.

The discretion conferred on justices under s 64(1) to make such order as is just and reasonable, applies both to the quantum of the costs and to the party which ought to pay them: *Bradford City Metropolitan District Council v Booth* (2000) 164 JP 485, [2000] All ER (D) 635, DC. As to costs awarded against the police or a regulatory body acting reasonably in the exercise of a public duty see *Bradford Metropolitan District Council v Booth* supra.

7 See the Prosecution of Offences Act 1985 s 18(1); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2063. The natural limit is an amount up to the sum actually incurred: *A-G v Clark* [1909] 2 KB 7 at 12 per Channell J. Costs should not be awarded as a penalty: *R v Highgate Justices, ex p Petrou* [1954] 1 All ER 406, [1954] 1 WLR 485, DC.

Where any person is convicted of an offence before a magistrates' court and under the conviction the court orders payment of any sum as a fine, penalty, forfeiture or compensation; and the sum so ordered to be paid does not exceed £5, the court must not order the accused to pay any costs under the Prosecution of Offences Act 1985 s 18 (as amended) unless in the particular circumstances of the case it considers it right to do so: s 18(4). Where any person under the age of 18 years is convicted of an offence before a magistrates' court, the amount of any costs ordered to be paid by the accused under s 18 (as amended) must not exceed the amount of the fine imposed on him: s 18(5) (amended by the Criminal Justice and Public Order Act 1994 s 168(1), Sch 9 para 26). As to a person's age see PARA 738 ante.

Where a convicted defendant is fined, the costs should be in keeping with the fine, and it should be within his means to pay in a reasonable time: *R v Nottingham Justices, ex p Fohmann* (1986) 151 JP 49, (1986) 84 Cr App Rep 316, DC.

8 Ie under the Magistrates' Courts Act 1980 s 64(1): see the text and notes 1-7 supra.

9 Ibid s 64(2). See note 3 supra. As to the recovery of costs see PARA 878 post.

10 Ie under the Prosecution of Offences Act 1985 s 18 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2063.

11 Ibid s 18(3).

12 *R v Hampshire Justices* (1862) 32 LJMC 46. A conviction that a person should be fined and 'do also pay a sum for costs' was held to be bad so far as it related to costs: *R v Pwllheli Justices, ex p Soane* [1948] 2 All ER 815, DC. See also *Bluestarling Ltd v Westminster City Council* (1996) Times, 24 July (incomplete order for costs could be perfected). It is incumbent on the parties to have material available on which the court can make its determination as to costs: *R v West London Magistrates' Court, ex p Kyprianou* (1993) Times, 3 May, DC.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### 767-771 Costs and Fees

For provision relating to the award of costs against third parties see Prosecution of Offences Act 1985 s 19B (added by Courts Act 2003 s 93); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2058.

## **769 Costs as between parties**

NOTE 3--Litigants in Person (Costs and Expenses) Act 1975 s 1(1) amended: SI 2009/1307; Constitutional Reform Act 2005 Sch 9 para 26, Sch 11 para 22 (in force 1 October 2009: SI 2009/1604). See *R (on the application of Perinpanathan) v City of Westminster Magistrates' Court* [2010] EWCA Civ 30, [2010] All ER (D) 44 (Feb).

NOTE 6--*Booth*, cited, applied: *Cambridge City Council v Alex Nesting Ltd* (2006) 170 JP Jo 539, DC. Whether a procedure is to be characterised as a complaint is a matter of substance, not of form: *R (on the application of Taylor) v Metropolitan Police Comr* [2009] EWHC 264 (Admin), [2009] All ER (D) 156 (Jun) (magistrates' court had jurisdiction to award costs on hearing application for closure order under the Anti-social Behaviour Act 2003 s 2).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(xi) Costs and Fees/770. Wasted costs and costs against a legal representative.

## **770. Wasted costs and costs against a legal representative.**

In any case where a magistrates' court<sup>1</sup> is satisfied that one party to criminal proceedings has incurred costs as a result of an unnecessary or improper act or omission by, or on behalf of, another party to the proceedings, it may make an order as to the payment of those costs<sup>2</sup> or it may disallow or order the legal or other representative<sup>3</sup> concerned to meet the whole of any wasted costs<sup>4</sup> or such part of them as may be determined in accordance with regulations<sup>5</sup>.

In any civil proceedings, a magistrates' court may disallow or order the legal or other representative concerned to meet the whole of any wasted costs or such part of them as may be determined in accordance with the rules made under the Magistrates' Courts Act 1980<sup>6</sup> which, in particular, make provision as to the destination of any payment required to be made, including provision for the reimbursement of sums paid by the Legal Services Commission<sup>7</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 See the Prosecution of Offences Act 1985 s 19(1); and the Costs in Criminal Cases (General) Regulations 1986, SI 1986/1335, reg 3. As to the Lord Chancellor's power to make regulations in relation to the award of costs see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2058. As to costs unnecessarily or improperly incurred see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2064. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 'Legal or other representative', in relation to any proceedings, means a person who is exercising a right of audience, or a right to conduct litigation, on behalf of any party to the proceedings: Magistrates' Courts Act 1980 s 145A(3) (s 145A added by the Courts and Legal Services Act 1990 s 112); Prosecution of Offences Act 1985 s 19A(3) (s 19A added by the Courts and Legal Services Act 1990 s 111).

4 'Wasted costs' means any costs incurred by a party: (1) as a result of any improper, unreasonable or negligent act or omission on the part of any representative or any employee of a representative (see the Magistrates' Courts Act 1980 s 145A(2)(a) (as added: see note 3 supra); and the Prosecution of Offences Act 1985 s 19A(3)(a) (as added: see note 3 supra); or (2) which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay (see the Magistrates' Courts Act 1980 s 145A(2)(b) (as so added); and the Prosecution of Offences Act 1985 s 19A(3)(b) (as so added)).

See also *Re A Barrister (Wasted Costs Order)* (2001) 165 JP Jo 594, CA (standard of proof on the balance of probabilities but the strength of evidence required is commensurate with the seriousness of the allegations).

5 See the Prosecution of Offences Act 1985 s 19A(1) (as added: see note 3 supra); and the Costs in Criminal Cases (General) Regulations 1986, SI 1986/1335, regs 3A-3D (added by SI 1991/789, r 2(1)). See further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2060.

6 le in accordance with the rules made under the Magistrates' Courts Act 1980 s 144 (as amended) (see PARA 588 ante): s 150(1).

7 See *ibid* s 145A(1), (4) (as added (see note 3 supra); s 145A(4) amended by the Access to Justice Act 1999 s 24, Sch 4 paras 15, 19); and the Magistrates' Courts (Costs Against Legal Representatives in Civil Proceedings) Rules 1991, SI 1991/2096, r 2(4)-(6) (r 2(5), (6) amended by SI 2001/615). As to the Legal Services Commission see LEGAL AID vol 65 (2008) PARA 17 et seq.

The rules made by virtue of the Magistrates' Courts Act 1980 s 145A (as added and amended) must: (1) require a magistrates' court which proposes to act under the rules against a legal or other representative to allow him a reasonable opportunity to appear before it and show cause why it should not do so (s 145A(5)(a) (as so added)); (2) provide that action may be taken under the rules either on the application of any party to the proceedings or on the motion of the court (s 145A(5)(b) (as so added)); (3) provide that no such action is taken after the end of the period of six months beginning with the date on which the proceedings are disposed of by the court (s 145A(5)(c) (as so added)); and (4) provide that a legal or other representative against whom action is taken under the rules may appeal to the Crown Court (s 145A(5)(d) (as so added)). As to the rules made for these purposes see the Magistrates' Courts (Costs Against Legal Representatives in Civil Proceedings) Rules 1991, SI 1991/2096 (as amended). For the meaning of 'Crown Court' see PARA 508 note 9 ante.

The legal or other representative against whom a court is proposing to make an order for wasted costs is to be given a reasonable opportunity to appear before it and show cause why the order should not be made: see the Magistrates' Courts (Costs Against Legal Representatives in Civil Proceedings) Rules 1991, SI 1991/2096, r 2(3). A court may make a wasted costs order either on the application of a party to the proceedings or on its own motion and the justices' clerk must make a record of the order in writing, and the reasons for the decision of the court (see r 2(2)), but a court must not make such an order after the end of the period of six months beginning with the date on which the proceedings are disposed of by the court: see r 2(7). As to justices' clerks see PARA 631 et seq ante. As to the meaning of 'writing' see PARA 507 note 12 ante.

Payments which are required to be made by a legal or other representative under a wasted costs order must be made to the party who has incurred the wasted costs: see r 2(4). However, as to the form of payment where the party who has incurred wasted costs is receiving assistance by way of representation under the Legal Aid Act 1988 Pt III (ss 8-13) (repealed), or is being granted representation under Pt IV (ss 14-18) (repealed) see the Magistrates' Courts (Costs Against Legal Representatives in Civil Proceedings) Rules 1991, SI 1991/2096, r 2(5), (6) (amended by SI 2001/615).

Where a wasted costs order has been made, the justices' chief executive must serve a copy of the order on any interested party and on the legal or other representative concerned: see the Magistrates' Courts (Costs Against Legal Representatives in Civil Proceedings) Rules 1991, SI 1991/2096, r 2(5), (6) (amended by SI 2001/615). As to the justices' chief executive see PARA 624 et seq ante.

Provision is also made for an appeal to the Crown Court against the making of a wasted costs order: see the Magistrates' Courts (Costs Against Legal Representatives in Civil Proceedings) Rules 1991, SI 1991/2096, r 3 (as amended). As to appeals to the Crown Court see PARA 883 post.

## UPDATE

### 681-771 Procedure

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

### 767-771 Costs and Fees

For provision relating to the award of costs against third parties see Prosecution of Offences Act 1985 s 19B (added by Courts Act 2003 s 93); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2058.

## 770 Wasted costs and costs against a legal representative

NOTE 7--SI 1991/2096 r 2(5), (6) further amended: SI 2005/617.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(2) PROCEDURE/(xi) Costs and Fees/771. Court fees.

### 771. Court fees.

Provision is made for certain court fees (including fees in relation to certificates, copies, duplicates, certain orders, licences and oaths<sup>1</sup>) to be chargeable by justices' chief executives<sup>2</sup>, and any enactment<sup>3</sup> providing for the payment of any fees for which such provision has been made has effect accordingly<sup>4</sup>. No fee is chargeable by a justices' chief executive in respect of any criminal matter<sup>5</sup> or in respect of any summons, warrant, notice or order issued, given or made under certain provisions<sup>6</sup> of the Magistrates' Courts Act 1980 or the General Rate Act 1967<sup>7</sup> or under any rule made for the purposes of those provisions<sup>8</sup>.

A magistrates' court may on the ground of poverty or for other reasonable cause remit in whole or in part any fee payable in proceedings before the court<sup>9</sup>.

1 See the Magistrates' Courts Act 1980 s 137, Sch 6 Pt I (substituted by the Magistrates' Courts Fees (Amendment) Order 1993, SI 1993/1889, art 2, Schedule; and amended by the Jobseekers Act 1995 s 41(4), Sch 2 para 4; the Tax Credits Act 1999 s 1(2), Sch 1 paras 1, 6(a); the Care Standards Act 2000 s 116, Sch 4 para 7; and the Magistrates' Courts Fees (Amendment) Order 1994, SI 1994/3250, art 2).

The Lord Chancellor may from time to time by order make such variations in the Magistrates' Courts Act 1980 Sch 6 Pt I (as substituted and amended) as may seem proper: s 137(4) (amended by the Transfer of Functions (Magistrates' Courts and Family Law) Order 1992, SI 1992/709, art 2(1)(c), (3), Sch 1). The power to make such an order is exercisable by statutory instrument; and a draft of any such statutory instrument must be laid before Parliament: Magistrates' Courts Act 1980 s 137(5). As to the orders made under s 137(4) (as amended) see the Magistrates' Courts Fees (Amendment) Order 1993, SI 1993/1889; and the Magistrates' Courts Fees (Amendment) Order 1994, SI 1994/3250. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 As to the justices' chief executive see PARA 624 et seq ante.

3 As to the meaning of 'enactment' see PARA 505 note 16 ante.

4 See the Magistrates' Courts Act 1980 s 137(1) (amended by the Access to Justice Act 1999 s 90, Sch 13 paras 95, 114(1), (2)). Nothing in the Magistrates' Courts Act 1980 s 137 (as amended) affects the fees chargeable in respect of licensing matters under Sch 6 Pt III (amended by the Local Government (Miscellaneous Provisions) Act 1982 s 47, Sch 7 Pt I; the Cinemas Act 1985 s 24(1), Sch 2; the Billiards (Abolition of Restrictions) Act 1987 s 1, Schedule; and the Pilotage Act 1987 s 32(5), Sch 3).

5 Ie except for the charging of a fee for supplying, for use in connection with a non-criminal matter, a copy of a document prepared in connection with a criminal matter: see the Magistrates' Courts Act 1980 Sch 6 Pt II.

6 Ie under *ibid* s 83(1), (2) (see PARA 865 post), s 88 (as amended) (see PARA 874 post), s 89 (as amended) (see PARA 856 post) or s 136 (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 7).

7 Ie the General Rate Act 1967 s 104 (repealed).

8 See the Magistrates' Courts Act 1980 s 137(2) (amended by the Access to Justice Act 1999 Sch 13 paras 95, 114(1), (3)), Magistrates' Courts Act 1980 Sch 6 Pt II.

9 *Ibid* s 138.

### UPDATE

## **681-771 Procedure**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (amended by SI 2006/353, SI 2006/2636, SI 2007/699, SI 2007/2317, SI 2007/3662, SI 2008/912, SI 2008/2076, SI 2008/3269, SI 2009/2087).

## **767-771 Costs and Fees**

For provision relating to the award of costs against third parties see Prosecution of Offences Act 1985 s 19B (added by Courts Act 2003 s 93); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2058.

## **771 Court fees**

TEXT AND NOTES--Repealed: Courts Act 2003 Sch 8 para 242, Sch 10. As to fees see now s 92; and COURTS vol 10 (Reissue) PARA 501. For magistrates' court fees, see the Magistrates' Courts Fees Order 2008, SI 2008/1052 (amended by SI 2008/2855, SI 2009/1496, SI 2010/731).

The Lord Chancellor's function under the 1980 Act s 137 (repealed with savings) is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(i) Deferment of Sentence/774. Power of youth courts to remit offender to magistrates' court for sentence.

## **(3) PENAL AND CIVIL POWERS**

### **(i) Deferment of Sentence**

#### **UPDATE**

#### **772 Deferment of sentence**

Material relating to this part has been revised and published under the title SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 22.

#### **UPDATE**

#### **773 Remittal of young offenders to youth courts for sentence**

Material relating to this part has been revised and published under the title SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 6.

#### **774. Power of youth courts to remit offender to magistrates' court for sentence.**

Where a person who appears or is brought before a youth court<sup>1</sup> charged with an offence subsequently attains the age of 18<sup>2</sup>, the youth court may, at any time after conviction and before sentence, remit him for sentence to a magistrates' court<sup>3</sup> (other than a youth court) acting for the same petty sessions area<sup>4</sup> as the youth court<sup>5</sup>.

1 As to youth courts generally see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARAS 1263-1276.

2 As to the determination of the age of a person see PARA 738 ante.

3 For the meaning of 'magistrates' court' see PARA 583 ante.

4 As to petty sessions see PARA 591 et seq ante.

5 See the Powers of Criminal Courts (Sentencing) Act 2000 s 9; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1123.

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(i) Deferment of Sentence/775. Remittal of offender to another court for sentence.

#### 775. Remittal of offender to another court for sentence.

Where a person aged 18<sup>1</sup> or over ('the offender') has been convicted<sup>2</sup> by a magistrates' court<sup>3</sup> ('the convicting court') of an offence<sup>4</sup> ('the instant offence') and:

288 (1) it appears to the convicting court that some other magistrates' court ('the other court') has convicted him of another such offence in respect of which the other court has neither passed sentence on him nor committed him to the Crown Court<sup>5</sup> for sentence nor dealt with him in any other way<sup>6</sup>; and

289 (2) the other court consents to his being remitted to the other court<sup>7</sup>,

the convicting court may remit him to the other court to be dealt with in respect of the instant offence by the other court instead of by the convicting court<sup>8</sup>. Where the convicting court remits the offender to the other court, it must adjourn the trial of the information charging him with the instant offence, and:

290 (a) the statutory provisions relating to remand in custody or on bail<sup>9</sup> and all other enactments<sup>10</sup>, whenever passed, relating to remand or the granting of bail in criminal proceedings<sup>11</sup> have effect, in relation to the convicting court's power or duty to remand the offender on that adjournment, as if any reference to the court to or before which the person remanded is to be brought or appear after remand were a reference to the court to which he is being remitted<sup>12</sup>; and

291 (b) the other court may deal with the case in any way in which it would have power to deal with it if all proceedings relating to the instant offence which took place before the convicting court had taken place before the other court<sup>13</sup>.

Where the convicting court has remitted the offender to the other court, the other court may remit him back to the convicting court<sup>14</sup>. The offender, if so remitted, has no right of appeal against the order of remission, but without prejudice to any right of appeal against any other order made in respect of the instant offence by the court to which he is remitted<sup>15</sup>.

1 As to the determination of the age of a person see PARA 738 ante.

2 For these purposes, 'conviction' includes a finding under the Powers of Criminal Courts (Sentencing) Act 2000 s 11(1) (remand for medical examination) (see PARA 723 ante) that the person in question did the act or made the omission charged, and 'convicted' is to be construed accordingly: s 10(8)(a).

3 For the meaning of 'magistrates' court' see PARA 583 ante.

4 le: (1) any offence punishable with imprisonment; and (2) any offence in respect of which the convicting court has a power or duty to order the offender to be disqualified under the Road Traffic Offenders Act 1988 s 34 (as amended), s 35 (as amended) or s 36 (as substituted and amended) (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 1057 et seq): Powers of Criminal Courts (Sentencing) Act 2000 s 10(2). Any reference in the Powers of Criminal Courts (Sentencing) Act 2000 to an offence punishable with imprisonment is to be construed without regard to any prohibition or restriction imposed by or under the Powers of Criminal Courts (Sentencing) Act 2000 or any Act on the imprisonment of young offenders: s 164(2).

5 For the meaning of 'Crown Court' see PARA 508 note 9 ante.

6 Powers of Criminal Courts (Sentencing) Act 2000 s 10(1)(a).

7 Ibid s 10(1)(b).

8 Ibid s 10(1). Nothing in s 10 precludes the convicting court from making any order which it has power to make under s 148 (restitution orders) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 375 et seq, 388, 481) by virtue of the offender's conviction of the instant offence: s 10(7). As to the procedure for remittals to other magistrates' courts see PARA 776 post.

9 le the provisions of the Magistrates' Courts Act 1980 s 128 (as amended): see PARA 718 ante. As to remand in custody or on bail see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1144-1151.

10 For these purposes, 'enactment' includes an enactment contained in any order, regulation or other instrument having effect by virtue of an Act: Powers of Criminal Courts (Sentencing) Act 2000 s 10(8)(b).

11 For these purposes, 'bail in criminal proceedings' has the same meaning as in the Bail Act 1976 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1166): Powers of Criminal Courts (Sentencing) Act 2000 s 10(8)(c).

12 Ibid s 10(3)(a).

13 Ibid s 10(3)(b) (which is expressed to be subject to the provisions of s 10(7) (see note 8 supra)). The power conferred on the other court by s 10(3)(b) includes, where applicable, the power to remit the offender under s 10 to another magistrates' court in respect of the instant offence: s 10(4).

14 Ibid s 10(5). The provisions of s 10(3), (4) (see the text and notes 9-13 supra) (so far as applicable) apply with the necessary modifications in relation to any remission under s 10(5): s 10(5).

15 Ibid s 10(6).

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).



Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(i) Deferment of Sentence/776. Procedure for remittal of offender to another court for sentence.

# **776. Procedure for remittal of offender to another court for sentence.**

Where a magistrates' court<sup>1</sup> remits an offender<sup>2</sup> to some other magistrates' court<sup>3</sup> after convicting him of an offence, the justices' chief executive<sup>4</sup> for the convicting court<sup>5</sup> must send to the justices' chief executive for the other court<sup>6</sup>:

- 292 (1) a copy signed by the justices' chief executive for the convicting court of the minute or memorandum of the conviction and remittal entered in the register<sup>7</sup>;
- 293 (2) a copy of any note of the evidence given at the trial of the offender, any written statement tendered in evidence and any deposition<sup>8</sup>;
- 294 (3) such documents and articles produced in evidence before the convicting court as have been retained by that court<sup>9</sup>;
- 295 (4) any report relating to the offender considered by the convicting court<sup>10</sup>;
- 296 (5) if the offender is remitted on bail<sup>11</sup>, a copy of the record made by the convicting court<sup>12</sup> relating to such bail and also any recognisance<sup>13</sup> entered into by any person as his surety<sup>14</sup>;
- 297 (6) if the convicting court makes an order for restitution<sup>15</sup>, a copy signed by the justices' chief executive for the convicting court of the minute or memorandum of the order entered in the register<sup>16</sup>;
- 298 (7) a copy of any legal aid order previously made in the same case<sup>17</sup>;
- 299 (8) a copy of any legal aid application<sup>18</sup>; and
- 300 (9) any statement of means already submitted<sup>19</sup>.

Where a magistrates' court remits an offender to some other magistrates' court and the other court remits him back to the convicting court<sup>20</sup>, the justices' chief executive for the other court must send to the justices' chief executive for the convicting court<sup>21</sup>:

- 301 (a) a copy signed by the justices' chief executive for the other court of the minute or memorandum of the remittal back entered in the register<sup>22</sup>;
- 302 (b) if the offender is remitted back on bail, a copy of the record made by the other court<sup>23</sup> relating to such bail and also any recognisance entered into by any person as his surety<sup>24</sup>;
- 303 (c) all documents and articles sent in pursuance of heads (1) to (9) above<sup>25</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 As to the meaning of 'the offender' see PARA 775 ante; definition applied by virtue of the Magistrates' Courts Rules 1981, SI 1981/552, r 19(3).

3 <sup>le</sup> under the Powers of Criminal Courts (Sentencing) Act 2000 s 10 (see PARA 775 ante): Magistrates' Courts Rules 1981, SI 1981/552, r 19(1); Powers of Criminal Courts (Sentencing) Act 2000 s 165, Sch 11 para 1(4).

4 As to the justices' chief executive see PARA 624 et seq ante.

5 As to the meaning of 'the convicting court' see PARA 775 ante; definition applied by virtue of the Magistrates' Courts Rules 1981, SI 1981/552, r 19(3).

6 Ibid r 19(1) (amended by SI 2001/610). As to the meaning of 'the other court' see PARA 775 ante; definition applied by virtue of the Magistrates' Courts Rules 1981, SI 1981/552, r 19(3).

7 Ibid r 19(1)(a) (amended by SI 2001/610). As to the duty to keep the register see PARA 628 ante.

- 8 Magistrates' Courts Rules 1981, SI 1981/552, r 19(1)(b).
- 9 Ibid r 19(1)(c).
- 10 Ibid r 19(1)(d).
- 11 As to bail see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1166 et seq.
- 12 Ie in pursuance of the Bail Act 1976 s 5 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1173.
- 13 As to recognisances see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq.
- 14 Magistrates' Courts Rules 1981, SI 1981/552, r 19(1)(e).
- 15 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 148 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 375 et seq, 388, 481): Magistrates' Courts Rules 1981, SI 1981/552, r 19(1)(f); Powers of Criminal Courts (Sentencing) Act 2000 Sch 11 para 1(4).
- 16 Magistrates' Courts Rules 1981, SI 1981/552, r 19(1)(f) (amended by SI 2001/610).
- 17 Magistrates' Courts Rules 1981, SI 1981/552, r 19(1)(g). Legal aid was available under the Legal Aid Act 1988, which has been repealed by the Access to Justice Act 1999. Advice and assistance in criminal proceedings is now administered by the Criminal Defence Service under the Access to Justice Act 1999: see LEGAL AID vol 65 (2008) PARA 131 et seq.
- 18 Magistrates' Courts Rules 1981, SI 1981/552, r 19(1)(h). See note 17 supra.
- 19 Ibid r 19(1)(i).
- 20 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 10(5) (see PARA 775 ante): Magistrates' Courts Rules 1981, SI 1981/552, r 19(2); Powers of Criminal Courts (Sentencing) Act 2000 Sch 11 para 1(4).
- 21 Magistrates' Courts Rules 1981, SI 1981/552, r 19(2) (amended by SI 2001/610).
- 22 Magistrates' Courts Rules 1981, SI 1981/552, r 19(2)(a) (amended by SI 2001/610).
- 23 Ie in pursuance of the Bail Act 1976 s 5 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1173.
- 24 Magistrates' Courts Rules 1981, SI 1981/552, r 19(2)(b).
- 25 Ibid r 19(2)(c).

## **UPDATE**

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### **776 Procedure for remittal of offender to another court for sentence**

TEXT AND NOTE 19--Head (9) omitted: SI 2003/1236.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(ii) Committal for Sentence/777. Committal for sentence for an offence triable either way.

## (ii) Committal for Sentence

### 777. Committal for sentence for an offence triable either way.

Where on the summary trial of an offence triable either way<sup>1</sup> a person aged 18<sup>2</sup> or over is convicted of the offence<sup>3</sup> and the magistrates' court<sup>4</sup> is of the opinion that the offence or the combination of the offence and one or more offences associated<sup>5</sup> with it was so serious that greater punishment should be inflicted for the offence than the court has power to impose<sup>6</sup>, or, in the case of a violent<sup>7</sup> or sexual offence<sup>8</sup>, that a custodial sentence for a term longer than the court has power to impose is necessary to protect the public from serious harm from him<sup>9</sup>, the magistrates' court may commit the offender in custody or on bail<sup>10</sup> to the Crown Court<sup>11</sup> for sentence<sup>12</sup>. Where on the summary trial of an offence triable either way a corporation is convicted of the offence<sup>13</sup> and the magistrates' court is of the opinion that the offence or the combination of the offence and one or more offences associated with it was so serious that greater punishment should be inflicted for the offence than the magistrates' court has power to impose<sup>14</sup>, the court may commit the corporation to the Crown Court for sentence<sup>15</sup>.

Where an offender is committed by a magistrates' court for sentence, the Crown Court must inquire into the circumstances of the case and may deal with the offender in any way in which it could deal with him if he had just been convicted of the offence on indictment before the court<sup>16</sup>.

1 For the meaning of 'offence triable either way' see PARA 653 ante. As to the mode of trial of such offences see PARA 659 ante.

2 As to the determination of the age of a person see PARA 738 ante.

3 Powers of Criminal Courts (Sentencing) Act 2000 s 3(1). However, s 3 does not apply in relation to an offence as regards which s 3 is excluded by the Magistrates' Courts Act 1980 s 33 (as amended) (certain offences where value involved is small) (see PARA 661 ante); Powers of Criminal Courts (Sentencing) Act 2000 s 3(4).

4 For the meaning of 'magistrates' court' see PARA 583 ante.

5 For the purposes of the Powers of Criminal Courts (Sentencing) Act 2000, an offence is associated with another if: (1) the offender is convicted of it in the proceedings in which he is convicted of the other offence, or (although convicted of it in earlier proceedings) is sentenced for it at the same time as he is sentenced for that offence; or (2) the offender admits the commission of it in the proceedings in which he is sentenced for the other offence and requests the court to take it into consideration in sentencing him for that offence: s 161(1).

6 Ibid s 3(2)(a). As to the maximum penalties which may be imposed see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 6. In considering the seriousness of any offence, the court may take into account any previous convictions of the offender or any failure of his to respond to previous sentences and the fact that an offence was committed on bail must be treated as an aggravating factor: see s 151(1), (2). The court's opinion of the seriousness of the offence is not dependent on receiving information that the offence is more serious than it was first thought to be when the decision was originally made to accept jurisdiction: *R v Sheffield Crown Court and Sheffield Stipendiary Magistrate, ex p DPP* (1994) 158 JP 334, 15 Cr App Rep (S) 768, DC; *R v Dover Magistrates' Court, ex p Pamment* (1994) 158 JP 665, 15 Cr App Rep (S) 778, DC; *R v North Sefton Magistrates' Court, ex p Marsh* (1994) 159 JP 9, 16 Cr App Rep (S) 401. Magistrates should apply their minds to matters in the Magistrates' Courts Act 1980 s 19(3) (see PARA 659 ante) which they are required to consider before accepting jurisdiction: *R v Flax Bourton Magistrates, ex p Customs and Excise Comrs* [1996] Crim LR 907, 160 JP 481, DC.

7 'Violent offence' means an offence which leads, or is intended or likely to lead, to a person's death or to physical injury to a person, and includes an offence which is required to be charged as arson (whether or not it would otherwise fall within this definition): Powers of Criminal Courts (Sentencing) Act 2000 s 161(3).

8 'Sexual offence' means any of the following:

70 (1) an offence under the Sexual Offences Act 1956, other than an offence under s 30 (man living on the earnings of prostitution), s 31 (woman exercising control over prostitution) or ss 33-

36 (suppression of brothels) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 218-221) (Powers of Criminal Courts (Sentencing) Act 2000 s 161(2)(a));

- 71 (2) an offence under the Mental Health Act 1959 s 128 of sexual intercourse with patients (Powers of Criminal Courts (Sentencing) Act 2000 s 161(2)(b));
- 72 (3) an offence under the Indecency with Children Act 1960 (Powers of Criminal Courts (Sentencing) Act 2000 s 161(2)(c));
- 73 (4) an offence under the Theft Act 1968 s 9 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 294) of burglary with intent to commit rape (Powers of Criminal Courts (Sentencing) Act 2000 s 161(2)(d));
- 74 (5) an offence under the Criminal Law Act 1977 s 54 (as amended) of inciting a girl under the age of 16 to have incestuous sexual intercourse (Powers of Criminal Courts (Sentencing) Act 2000 s 161(2)(e));
- 75 (6) an offence under the Protection of Children Act 1978 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 757-760) (Powers of Criminal Courts (Sentencing) Act 2000 s 161(2)(f));
- 76 (7) an offence under the Criminal Law Act 1977 s 1 (as substituted and amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 67) of conspiracy to commit any of the offences in heads (1)-(6) *supra* (Powers of Criminal Courts (Sentencing) Act 2000 s 161(2)(g));
- 77 (8) an offence under the Criminal Attempts Act 1981 s 1 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 79) of attempting to commit any of those offences (Powers of Criminal Courts (Sentencing) Act 2000 s 161(2)(h));
- 78 (9) an offence of inciting another to commit any of those offences (Powers of Criminal Courts (Sentencing) Act 2000 s 161(2)(i)).

9 *Ibid* s 3(2)(b).

10 As a general rule, the right to bail (see the Bail Act 1976 s 4(1); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1166 *et seq*) does not apply as respects proceedings on or after a person's conviction: s 4(2). However, where a plea of guilty is made at the plea before venue stage, it is not unusual, in most cases, to alter the position as regards bail or custody: *R v Rafferty* [1999] 1 Cr App Rep 235, 162 JP 353. Bail will normally be continued even though it is anticipated that a custodial sentence will be imposed by the Crown Court unless there are good reasons to the contrary: *R v Rafferty* *supra*.

As to the variation of arrangements for bail on committal to Crown Court see the Magistrates' Courts Rules 1981, SI 1981/552, r 93 (amended by SI 2001/610; and by SI 2000/3361).

11 The offender must be committed to the most convenient location of the Crown Court, and in selecting that location the justices must have regard to the location or locations designated by the presiding judge for the purpose of committals from their petty sessions area: see *Practice Note* [2001] 4 All ER 635. For the meaning of 'Crown Court' see PARA 508 note 9 *ante*. For the form for committal for sentence see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Form 39. As to petty sessions see PARA 591 *et seq* *ante*. See PARA 505 note 12 *ante*.

12 Powers of Criminal Courts (Sentencing) Act 2000 s 3(2). The reference in the text to sentence is a reference to sentence in accordance with s 5(1) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1105): s 3(2). Where the court commits a person under s 3(2), then s 6 (which enables a magistrates' court, where it commits a person under s 3 in respect of an offence, also to commit him to the Crown Court to be dealt with in respect of certain other offences) (see PARA 780 *post*) applies accordingly: s 3(3). As to the procedure for committal for sentence see PARA 781 *post*.

As to the duty of a magistrates' court to inform the accused of its power to commit him for sentence see the Magistrates' Courts Act 1980 s 17A(4)(b) (added by the Criminal Procedure and Investigations Act 1996 s 49(1), (6); and amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 62) (see PARA 657 *ante*); the Magistrates' Courts Act 1980 s 20(2)(b) (amended by the Criminal Justice Act 1991 s 100, Sch 11 para 25; and the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 63) (see PARA 659 *ante*); and the Magistrates' Courts Act 1980 s 25(4)(b) (see PARA 664 *ante*). Where the statutory procedure in relation to committal for sentence is not properly followed, the committal is invalid: *R v Kent Justices, ex p Machin* [1952] 2 QB 355, [1952] 1 All ER 1123, DC; *R v Tottenham Justices, ex p Arthur's Transport Services* [1981] Crim LR 180, DC.

Where, after conviction, a magistrates' court adjourns for a pre-sentence report in terms sufficiently unqualified to found a legitimate expectation that the defendant will not be committed to the Crown Court for sentence, the court sentencing on the later occasion may not commit him for sentence in the absence of new information justifying a departure from the earlier indication: *R v Norwich Magistrates' Court, ex p Elliott* [2000] 1 Cr App Rep (S) 152, DC; *R v Nottingham Magistrates' Court, ex p Davidson* [2000] 1 Cr App Rep (S) 167, [2000] Crim LR 118, DC; *R v Horseferry Road Magistrates' Court, ex p Ruggless* [2000] 1 Cr App Rep (S) 484, DC; *R v Salisbury Magistrates' Court, ex p Gray* [2000] 1 Cr App Rep (S) 267, 163 JP 732, DC; and see *R (on the application of Walton) v Dewsbury Magistrates' Court* [2001] EWHC Admin 863, [2001] All ER (D) 303 (Oct), DC.

There is no right of appeal against a committal for sentence: *R v London Sessions, ex p Rogers* [1951] 2 KB 74, [1951] 1 All ER 343, DC. However, where the offender has not pleaded guilty there may be an appeal against conviction: see PARA 883 post. As to whether a magistrate is entitled to commit the defendant for sentence after accepting jurisdiction having misunderstood material facts fully outlined to him see *R v Cardiff Stipendiary Magistrate, ex p Morgan* [1989] Crim LR 503, 153 JP 446, DC. As to when the court may decide to commit for sentence see *R v North Sefton Magistrates' Court, ex p Marsh* [1994] Crim LR 865, 159 JP 9, DC. As to the power of the Crown Court on committal see the Powers of Criminal Courts (Sentencing) Act 2000 s 5; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1105. As to pre-sentence reports for these purposes see PARA 791 post.

13 Ibid s 3(1), (5).

14 Ibid s 3(2)(a), (5).

15 Ibid s 3(2), (5). The reference in the text to sentence is a reference to sentence in accordance with s 5(1) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1105): s 3(2). Where the court commits a corporation under s 3(2), (5), then s 6 (which enables a magistrates' court, where it commits a corporation under s 3 in respect of an offence, also to commit the corporation to the Crown Court to be dealt with in respect of certain other offences) (see PARA 780 post) applies accordingly: s 3(3).

16 Ibid s 5(1). See also *R v Brogan* [1975] 1 All ER 879, [1975] 1 WLR 393, CA. As to the power of the Crown Court to remit the case to the magistrates where it is discovered that the decision to commit for sentence was taken on the wrong view of the facts see *R v Crown Court at Isleworth, ex p Buda* [2000] 1 Cr App Rep (S) 538, [2000] Crim LR 111, DC.

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 777 Committal for sentence for an offence triable either way

NOTES 7, 8--Powers of Criminal Courts (Sentencing) Act 2000 s 161(2), (3) repealed: Criminal Justice Act 2003 Sch 37 Pt 7.

NOTE 8--Sexual Offences Act 1956 ss 30, 31 repealed: Sexual Offences Act 2003 Sch 6 para 11(a), Sch 7. Mental Health Act 1959 s 128 repealed: 2003 Act Sch 6 para 13, Sch 7. Indecency with Children Act 1960 repealed: 2003 Act Sch 6 para 14, Sch 7. Criminal Law Act 1977 s 54 repealed: 2003 Act Sch 6 para 21, Sch 7. See further Violent Crime Reduction Act 2006 s 55 (continuity of sexual offences law).

NOTE 11--SI 1981/553 Sch 2 Form 39 revoked: SI 2003/1236.

NOTE 16--See also *R v Pope* [2002] UKHL 26, [2002] 3 All ER 889, [2002] 1 WLR 1966.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(ii) Committal for Sentence/778. Committal for sentence on indication of guilty plea to offence triable either way.

**778. Committal for sentence on indication of guilty plea to offence triable either way.**

Where:

- 304 (1) a person aged 18<sup>1</sup> or over appears or is brought before a magistrates' court<sup>2</sup> on an information charging him with an offence triable either way<sup>3</sup>;
- 305 (2) he or his representative indicates that he would plead guilty if the offence were to proceed to trial<sup>4</sup>;
- 306 (3) proceeding as if the relevant procedure<sup>5</sup> had been complied with and he pleaded guilty, the magistrates' court convicts him of the offence<sup>6</sup>; and
- 307 (4) the magistrates' court has committed the offender to the Crown Court<sup>7</sup> for trial for one or more related offences<sup>8</sup>, that is to say, one or more offences which, in its opinion, are related to the offence<sup>9</sup>,

it may commit him in custody or on bail to the Crown Court to be dealt with<sup>10</sup> in respect of the offence<sup>11</sup>. Where this power is not exercisable but the magistrates' court is still to inquire, as examining justices<sup>12</sup>, into one or more related offences it must adjourn the proceedings relating to the offence until after the conclusion of its inquiries<sup>13</sup>, and if it commits the offender to the Crown Court for trial for one or more related offences, it may then exercise that power<sup>14</sup>.

1 As to the determination of the age of a person see PARA 738 ante.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 Powers of Criminal Courts (Sentencing) Act 2000 s 4(1)(a). For the meaning of 'offence triable either way' see PARA 653 ante.

4 Ibid s 4(1)(b).

5 Ie under the Magistrates' Courts Act 1980 s 9(1) (procedure on trial): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1104.

6 Powers of Criminal Courts (Sentencing) Act 2000 s 4(1)(c).

7 For the meaning of 'Crown Court' see PARA 508 note 9 ante.

8 For these purposes, one offence is related to another if, were they both to be prosecuted on indictment, the charges for them could be joined in the same indictment: Powers of Criminal Courts (Sentencing) Act 2000 s 4(7).

9 Ibid s 4(2). See note 11 infra.

10 Ie in accordance with ibid s 5(1): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1105.

11 Ibid s 4(2). Where the magistrates' court under s 4(2) commits the offender to the Crown Court to be dealt with in respect of the offence, and does not state that, in its opinion, it also has power so to commit him under s 3(2) (see PARA 777 ante), then s 5(1) does not apply unless he is convicted before the Crown Court of one or more of the related offences: s 4(4). Where the court commits a person under s 4(2), then s 6 (which enables a magistrates' court, where it commits a person under s 4 in respect of an offence, also to commit him to the Crown Court to be dealt with in respect of certain other offences) (see PARA 780 post) applies accordingly: s 4(6). Provision is made in relation to the powers of the Crown Court on committal for sentence under s 4: see s 5; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1105.

12 As to the use of the expression 'examining justices' see PARA 524 note 9 ante.

13 Powers of Criminal Courts (Sentencing) Act 2000 s 4(3)(a).

14 Ibid s 4(3)(b).

## **UPDATE**

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

## **UPDATE**

### **779 Committal of mentally disordered offender for restriction order**

Material relating to this part has been revised and published under the title SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(ii) Committal for Sentence/780. Committal for sentence where offender committed in respect of another sentence.

### **780. Committal for sentence where offender committed in respect of another sentence.**

Where a magistrates' court<sup>1</sup> commits a person in custody or on bail<sup>2</sup> to the Crown Court<sup>3</sup> to be sentenced or otherwise dealt with in respect of an offence<sup>4</sup>, and the relevant offence is an indictable offence<sup>5</sup>, the committing court may also commit the offender, in custody or on bail as the case may require, to the Crown Court to be dealt with in respect of any other offence whatsoever in respect of which the committing court has power to deal with him, being an offence of which he has been convicted by that or any other court<sup>6</sup>.

Where a magistrates' court so commits a person in custody or on bail to the Crown Court to be sentenced or otherwise dealt with in respect of an offence<sup>7</sup> and the relevant offence is a summary offence<sup>8</sup>, the committing court may commit the offender, in custody or on bail as the case may require, to the Crown Court to be dealt with in respect of: (1) any other offence of which the committing court has convicted him, being either an offence punishable with imprisonment<sup>9</sup>, or an offence in respect of which the committing court has a power or duty to order him to be disqualified for a motoring offence<sup>10</sup>; or (2) any suspended sentence<sup>11</sup> in respect of which the committing court has power<sup>12</sup> to deal with him<sup>13</sup>.

Where a magistrates' court commits a person to be dealt with by the Crown Court in respect of an offence, the Crown Court may after inquiring into the circumstances of the case deal with him in any way in which the magistrates' court could deal with him if it had just convicted him of the offence<sup>14</sup>. However, this does not apply where a magistrates' court commits a person to be dealt with by the Crown Court in respect of a suspended sentence<sup>15</sup>. In such a case the Crown Court exercises its statutory powers<sup>16</sup> to deal with the suspended sentence<sup>17</sup>. Where a magistrates' court commits a person to be dealt with by the Crown Court<sup>18</sup>, any duty or power which would otherwise fall to be discharged or exercised by the magistrates' court will not be discharged or exercised by that court but will instead be discharged or may instead be exercised by the Crown Court<sup>19</sup>.

1 As to bail see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1166 et seq.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 le under any of the following enactments: the Vagrancy Act 1824 (incorrigible rogues) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 833-836); the Powers of Criminal Courts (Sentencing) Act 2000 ss 3, 4 (committal for sentence for offences triable either way) (see PARAS 777-778 ante); s 13(5) (conditionally discharged person convicted of further offence) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 42); s 116(3)(b) (offender convicted of offence committed during currency of original sentence); and s 120(2) (offender convicted during operational period of suspended sentence) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 110 et seq); s 6(4). For the meaning of 'Crown Court' see PARA 508 note 9 ante.

4 Ibid s 6(1). As to the procedure for committal for sentence see PARA 781 post. For the form for committal to the Crown Court see the Magistrates' Court (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Form 96. See PARA 505 note 12 ante.

5 For the meaning of 'indictable offence' see PARA 653 ante. As to indictments generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1202 et seq; and as to the procedure for offences triable on indictment see CRIMINAL LAW, EVIDENCE AND PROCEDURE.

6 Powers of Criminal Courts (Sentencing) Act 2000 s 6(2). As to the meaning of 'court' see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 22.

7 Ibid s 6(1), (3).

8 For the meaning of 'summary offence' see PARA 653 ante.

9 Any reference in the Powers of Criminal Courts (Sentencing) Act 2000 to an offence punishable with imprisonment is to be construed without regard to any prohibition or restriction imposed by or under the Powers of Criminal Courts (Sentencing) Act 2000 or any Act on the imprisonment of young offenders: s 164(2).

10 Ibid s 6(3)(a). As to disqualification for a motoring offence under the Road Traffic Offenders Act 1988 s 34 (as amended), s 35 (as amended) or s 36 (as substituted and amended): see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 1057 et seq.

11 As to the meaning of 'suspended sentence' see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 110 et seq.

12 le under the Powers of Criminal Courts (Sentencing) Act 2000 s 120(1): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 110 et seq.

13 Ibid s 6(3)(b).

14 Ibid s 7(1). Where a magistrates' court commits a person to be dealt with by the Crown Court in respect of an offence triable only on indictment in the case of an adult (being an offence which was tried summarily because of the offender's being under 18 years of age), the Crown Court's powers under s 7(1) in respect of the offender after he attains the age of 18 is the power to do either or both of the following: (1) to impose a fine not exceeding £5,000; (2) to deal with the offender in respect of the offence in any way in which the magistrates' court could deal with him if it had just convicted him of an offence punishable with imprisonment for a term not exceeding six months: s 7(4). As to the determination of the age of a person see PARA 738 ante.

15 Ibid s 7(2).

16 le under ibid s 119.

17 Ibid s 7(2).

18 le ibid 6 (see the text and notes 1-13 supra) or any enactment mentioned in s 6(4) (see note 3 supra).

19 Ibid s 7(3) (which is expressed without prejudice to s 7(1), (2): see the text and notes 14-17 supra).

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).



## **780 Committal for sentence where offender committed in respect of another sentence**

NOTE 3--Powers of Criminal Courts (Sentencing) Act 2000 s 116(3)(b) repealed: Criminal Justice Act 2003 Sch 32 Pt 1, PARAS 90, 116, Sch 37 Pt 7.

NOTE 4--SI 1981/553 Sch 2 Form 96 revoked: SI 2003/1236.

TEXT AND NOTES 14-19--Material relating to this part has been revised and published under the title SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 17.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(ii) Committal for Sentence/781. Procedure in relation to committals for sentence.

### **781. Procedure in relation to committals for sentence.**

Where a magistrates' court<sup>1</sup> commits an offender to the Crown Court<sup>2</sup> after convicting him of an offence, the justices' chief executive<sup>3</sup> for the magistrates' court must send to the appropriate officer of the Crown Court<sup>4</sup>:

- 308 (1) a copy signed by the justices' chief executive for the magistrates' court of the minute or memorandum of the conviction entered in the register<sup>5</sup>;
- 309 (2) a copy of any note of the evidence given at the trial of the offender, any written statement tendered in evidence and any deposition<sup>6</sup>;
- 310 (3) such documents and articles produced in evidence before the magistrates' court as have been retained by the court<sup>7</sup>;
- 311 (4) any report relating to the offender considered by the court<sup>8</sup>;
- 312 (5) if the offender is committed on bail<sup>9</sup>, a copy of the record made relating to such bail<sup>10</sup> and also any recognisance<sup>11</sup> entered into by any person as his surety<sup>12</sup>;
- 313 (6) if the magistrates' court imposes an interim disqualification<sup>13</sup> for holding or obtaining a licence to drive a vehicle<sup>14</sup>, a statement of the date of birth and sex of the offender<sup>15</sup>;
- 314 (7) if the magistrates' court makes an order for restitution<sup>16</sup>, a copy signed by the clerk of the convicting court of the minute or memorandum of the order entered in the register<sup>17</sup>;
- 315 (8) a copy of any contribution order<sup>18</sup> previously made in the case<sup>19</sup>;
- 316 (9) any documents relating to an appeal by the prosecution against the granting of bail<sup>20</sup>.

Where a magistrates' court commits an offender to the Crown Court<sup>21</sup> and the magistrates' court on that occasion imposes<sup>22</sup> an interim disqualification for holding or obtaining a licence to drive a vehicle<sup>23</sup>, the justices' chief executive for the magistrates' court must give notice of the interim disqualification to the appropriate officer of the Crown Court<sup>24</sup>. Where a magistrates' court commits a person on bail to the Crown Court<sup>25</sup>, the justices' chief executive for the magistrates' court must give notice thereof in writing to the governor of the prison to which persons of the sex of the person committed are committed by that court if committed in custody for trial and also, if the person committed is under the age of 21, to the governor of the remand centre to which he would have been committed if the court had refused him bail<sup>26</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 le under any of the following enactments: the Vagrancy Act 1824 (incorrigible rogues) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 833-836); the Powers of Criminal Courts (Sentencing) Act 2000 s 6(1)-(3) (committal for sentence where offender committed in respect of another sentence) (see PARA 780 ante); s 120 (court by which suspended sentence may be dealt with); the Bail Act 1976 s 6 (as amended) (absconding by person on bail) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1199); the Powers of Criminal Courts (Sentencing) Act 2000 s 3 (committal for sentence for an offence triable either way) (see PARA 777 ante); s 116(3) (power to return to prison where offence committed during original sentence): see the Magistrates' Courts Rules 1981, SI 1981/552, r 17(1) (amended by SI 1992/2072); Interpretation Act 1978 s 17(2)(a); Powers of Criminal Courts (Sentencing) Act 2000 s 165, Sch 11 para 1(4). For the meaning of 'Crown Court' see PARA 508 note 9 ante.

3 As to the justices' chief executive see PARA 624 et seq ante.

4 Magistrates' Courts Rules 1981, SI 1981/552, r 17(1) (amended by SI 2001/610).

5 Magistrates' Courts Rules 1981, SI 1981/552, r 17(1)(a) (amended by SI 2001/610). As to the duty to keep the register see PARA 628 ante.

6 Magistrates' Courts Rules 1981, SI 1981/552, r 17(1)(b).

7 Ibid r 17(1)(c).

8 Ibid r 17(1)(d).

9 As to bail see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1166 et seq.

10 le a copy of the record made in pursuance of the Bail Act 1976 s 5 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1173.

11 As to recognisances see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq.

12 Magistrates' Courts Rules 1981, SI 1981/552, r 17(1)(e).

13 le under the Criminal Justice Act 1967 s 56(8) (repealed).

14 le under the Road Traffic Act 1988 Pt III (ss 87-109) (as amended) (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 442 et seq): Magistrates' Courts Rules 1981, SI 1981/552, r 17(1)(f); Interpretation Act 1978 s 17(2)(a).

15 Magistrates' Courts Rules 1981, SI 1981/552, r 17(1)(f) (amended by SI 1983/523).

16 le under the Powers of Criminal Courts (Sentencing) Act 2000 s 148 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 375 et seq, 388, 481): Magistrates' Courts Rules 1981, SI 1981/552, r 17(1)(g); Powers of Criminal Courts (Sentencing) Act 2000 Sch 11 para 1(4).

17 Magistrates' Courts Rules 1981, SI 1981/552, r 17(1)(g).

18 le under the Legal Aid Act 1982 s 7 (repealed).

19 Magistrates' Courts Rules 1981, SI 1981/552, r 17(1)(h) (added by SI 1983/523).

20 Magistrates' Courts Rules 1981, SI 1981/552, r 17(1)(i).

21 le under any of the following enactments: the Vagrancy Act 1824 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 833-836); the Powers of Criminal Courts (Sentencing) Act 2000 s 3 (see PARA 777 ante); s 6(1)-(3) (see PARA 780 ante); s 120: see the Magistrates' Courts Rules 1981, SI 1981/552, r 17(2) (amended by SI 1992/2072); Interpretation Act 1978 s 17(2)(a).

22 le under the Criminal Justice Act 1967 s 56(8) (repealed).

23 le under the Road Traffic Act 1988 Pt III (ss 87-109) (as amended) (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 442 et seq): Magistrates' Courts Rules 1981, SI 1981/552, r 17(2); Interpretation Act 1978 s 17(2) (a).

24 Magistrates' Courts Rules 1981, SI 1981/552, r 17(2) (amended by SI 2001/610).

25 le under any of the enactments mentioned in the Magistrates' Courts Rules 1981, SI 1981/552, r 17(2) (see the text and notes 21-24 supra) or under the Bail Act 1976 s 6 (as amended) (see CRIMINAL LAW, EVIDENCE

AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1199): Magistrates' Courts Rules 1981, SI 1981/552, r 17(3) (amended by SI 1992/2072).

26 Magistrates' Courts Rules 1981, SI 1981/552, r 17(3) (amended by SI 2001/610).

## **UPDATE**

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### **781 Procedure in relation to committals for sentence**

NOTE 2--2000 Act s 120 repealed: Criminal Justice Act 2003 Sch 37 Pt 7. Powers of Criminal Courts (Sentencing) Act 2000 s 116(3) repealed: 2003 Act Sch 32 Pt 1, PARAS 90, 116, Sch 37 Pt 7.

TEXT AND NOTES 18, 19--Head (8) omitted: SI 2003/1236.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(iii) Recognisances

### **(iii) Recognisances**

## **UPDATE**

### **782-786 Recognisances**

Material relating to this part has been revised and published under the title SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(iv) Suspended Sentences

### **(iv) Suspended Sentences**

## **UPDATE**

### **787 Absolute and conditional discharge**

Material relating to this part has been revised and published under the title SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 40 et seq.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(v) Suspended Sentences/788. Suspended sentences.

## (v) Suspended Sentences

### 788. Suspended sentences.

A court<sup>1</sup> which passes a sentence of imprisonment<sup>2</sup> for a term<sup>3</sup> of not more than two years for an offence may order<sup>4</sup> that the sentence must not take effect unless, during a period specified in the order<sup>5</sup>, the offender commits in Great Britain another offence punishable with imprisonment<sup>6</sup> and thereafter a court having power to do so orders<sup>7</sup> that the original sentence is to take effect<sup>8</sup>. A sentence to which such an order applies is known as a 'suspended sentence'<sup>9</sup>.

A magistrates' court<sup>10</sup> must not deal with an offender by means of a suspended sentence unless it is of the opinion that the case is one in which a sentence of imprisonment would have been appropriate even without the power to suspend the sentence<sup>11</sup>, and that the exercise of that power can be justified by the exceptional circumstances of the case<sup>12</sup>. A magistrates' court which passes a suspended sentence on any person for an offence: (1) must consider whether the circumstances of the case are such as to warrant in addition the imposition of a fine<sup>13</sup> or the making of a compensation order<sup>14</sup>; and (2) must not impose a community sentence<sup>15</sup> in his case in respect of that offence or any other offence of which he is convicted by or before the magistrates' court or for which he is dealt with by the court<sup>16</sup>. On passing a suspended sentence the magistrates' court must explain to the offender in ordinary language his liability<sup>17</sup> if during the operational period he commits an offence punishable with imprisonment<sup>18</sup>.

Where an offender is convicted of an offence punishable with imprisonment committed during the operational period of a suspended sentence and either he is so convicted by or before a court having power to deal with him in respect of the suspended sentence<sup>19</sup> or he subsequently appears or is brought before such a court, then, unless the sentence has already taken effect, that court must consider his case and deal with him by one of the following methods:

- 317 (a) the court may order that the suspended sentence takes effect with the original term unaltered<sup>20</sup>;
- 318 (b) the court may order that the sentence takes effect with the substitution of a lesser term for the original term<sup>21</sup>;
- 319 (c) the court may by order vary the original order by substituting for the period specified in that order a period ending not later than two years from the date of the variation<sup>22</sup>; or
- 320 (d) the court may make no order with respect to the suspended sentence<sup>23</sup>.

The court must make an order under head (a) above unless it is of the opinion that it would be unjust to do so in view of all the circumstances, including the facts of the subsequent offence<sup>24</sup>. Where a court orders that a suspended sentence is to take effect, with or without any variation of the original term, the court may order that that sentence takes effect immediately or that the term of that sentence commences on the expiry of another term of imprisonment passed on the offender by that or another court<sup>25</sup>. Where a court deals with an offender in respect of a suspended sentence, the appropriate officer of the court must notify the appropriate officer of the court which passed the sentence of the method adopted<sup>26</sup>. Where on consideration of the case of an offender a court makes no order with respect to a suspended sentence, the appropriate officer of the court must record that fact<sup>27</sup>.

For the purposes of any enactment conferring rights of appeal in criminal cases, any order made by a court with respect to a suspended sentence is treated as a sentence passed on the offender by that court for the offence for which the suspended sentence was passed<sup>28</sup>.

If it appears to a justice of the peace<sup>29</sup> that an offender has been convicted in Great Britain of an offence punishable with imprisonment committed during the operational period of a

suspended sentence<sup>30</sup>, and that he has not been dealt with in respect of the suspended sentence<sup>31</sup>, that justice may issue a summons<sup>32</sup> requiring the offender to appear at the place and time specified in it, or a warrant for his arrest<sup>33</sup>. Where an offender is convicted by a court in Scotland of an offence punishable with imprisonment<sup>34</sup>, and the court is informed that the offence was committed during the operational period of a suspended sentence passed in England or Wales<sup>35</sup>, the court must give written notice of the conviction to the appropriate officer of the court by which the suspended sentence was passed<sup>36</sup>. Unless he is acting in consequence of such a notice, a justice of the peace must not issue a summons except on information and must not issue a warrant except on information in writing and on oath<sup>37</sup>.

1 As to the meaning of 'court' see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 1.

2 'Sentence of imprisonment' does not include a committal: (1) in default of payment of any sum of money; (2) for want of sufficient distress to satisfy any sum of money; or (2) for failure to do or abstain from doing anything required to be done or left undone: Powers of Criminal Courts (Sentencing) Act 2000 s 163.

3 For the purposes of any reference in *ibid* Pt V Ch V(ss 118-125) (as amended), however expressed, to the term of imprisonment to which a person has been sentenced, consecutive terms and terms which are wholly or partly concurrent are, unless the context otherwise requires, treated as a single term: s 125(1).

4 *Ie* subject to *ibid* s 118(4): see the text to notes 10-12 *infra*.

5 The period specified in an order must be a period of not less than one year nor more than two years beginning with the date of the order: *ibid* s 118(2).

6 Any reference in the Powers of Criminal Courts (Sentencing) Act 2000 to an offence punishable with imprisonment is to be construed without regard to any prohibition or restriction imposed by or under the Powers of Criminal Courts (Sentencing) Act 2000 or any Act on the imprisonment of young offenders: s 164(2).

7 *Ie* under *ibid* s 119: see the text and notes 19-28 *infra*.

8 *Ibid* s 118(1). As to entries in the register in respect of suspended sentences see Magistrates' Courts Rules 1981, SI 1981/552, r 29 (amended by SI 1982/245; SI 1992/2072; SI 2001/610). As to suspended sentence supervision orders see the Powers of Criminal Courts (Sentencing) Act 2000 ss 122-124 (as amended); the Magistrates' Courts Rules 1981, SI 1981/552, r 30 (amended by SI 2001/610). As to the duty to keep the register see PARA 628 *ante*.

9 Powers of Criminal Courts (Sentencing) Act 2000 s 118(3). For the purposes of the Powers of Criminal Courts (Sentencing) Act 2000, 'operational period', in relation to a suspended sentence, means the period specified in the order under s 118(1) (see the text and notes 1-8 *supra*): s 118(3).

Subject to any provision to the contrary contained in the Criminal Justice Act 1967, the Powers of Criminal Courts (Sentencing) Act 2000 or any other enactment passed or instrument made under any enactment after 31 December 1967:

79 (1) a suspended sentence which has not taken effect under s 119 (see the text and notes 19-28 *infra*) is treated as a sentence of imprisonment for the purposes of all enactments and instruments made under enactments except any enactment or instrument which provides for disqualification for or loss of office, or forfeiture of pensions, of persons sentenced to imprisonment (s 118(8)(a)); and

80 (2) where a suspended sentence has taken effect under s 119, the offender is treated for the purposes of the enactments and instruments excepted by head (1) *supra* as having been convicted on the ordinary date on which the period allowed for making an appeal against an order under s 119 expires or, if such an appeal is made, the date on which it is finally disposed of or abandoned or fails for non-prosecution(s 118(8)(b)).

10 For the meaning of 'magistrates' court' see PARA 583 *ante*.

11 Powers of Criminal Courts (Sentencing) Act 2000 s 118(4)(a).

12 *Ibid* s 118(4)(b).

13 As to fines see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 139 *et seq*.

14 Powers of Criminal Courts (Sentencing) Act 2000 s 118(5). As to compensation orders see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 375 et seq, 388, 481.

15 For the meaning of 'community sentence' see PARA 789 post.

16 Powers of Criminal Courts (Sentencing) Act 2000 s 118(6).

17 Ie under ibid s 119: see the text and notes 19-28 infra.

18 Ibid s 118(7).

19 An offender may be dealt with in respect of a suspended sentence by the Crown Court or, where the sentence was passed by a magistrates' court, by any magistrates' court before which he appears or is brought: ibid s 120(1). Where an offender is convicted by a magistrates' court of an offence punishable with imprisonment and the court is satisfied that the offence was committed during the operational period of a suspended sentence passed by the Crown Court: (1) the court may, if it thinks fit, commit him in custody or on bail to the Crown Court; and (2) if it does not, must give written notice of the conviction to the appropriate officer of the Crown Court: s 120(2). For these purposes, a suspended sentence passed on an offender on appeal is treated as having been passed by the court by which he was originally sentenced: s 120(3). For the meaning of 'Crown Court' see PARA 508 note 9 ante.

20 Ibid s 119(1)(a).

21 Ibid s 119(1)(b).

22 Ibid s 119(1)(c).

23 Ibid s 119(1)(d).

24 Ibid s 119(2). Where the court is of that opinion it must state its reasons: s 119(2).

25 Ibid s 119(3). The power to make an order under s 119(3) has effect subject to s 84 (restriction on consecutive sentences for released prisoners): s 119(4).

26 Ibid s 119(6).

27 Ibid s 119(7).

28 Ibid s 119(8).

29 Jurisdiction for the purposes of ibid s 121(1) (see the text and notes 30-33 infra) may be exercised, if the suspended sentence was passed by a magistrates' court by a justice acting for the area for which that court acted: s 121(2). In relation to a suspended sentence passed on appeal, s 121 is to be construed in accordance with s 120(3) (see the text to note 19 supra).

30 Ibid s 121(1)(a). See note 29 supra.

31 Ibid s 121(1)(b). See note 29 supra.

32 As to summonses generally see PARA 687 et seq ante.

33 Powers of Criminal Courts (Sentencing) Act 2000 s 121(1). See note 29 supra. As to warrants for arrest see PARA 695 ante.

34 Ibid s 121(3)(a). See note 29 supra.

35 Ibid s 121(3)(b). See note 29 supra. For the meaning of 'England' see PARA 501 note 7 ante; and for the meaning of 'Wales' see PARA 501 note 7 ante.

36 Ibid s 121(3). See note 29 supra.

37 Ibid s 121(4). See note 29 supra. A summons or warrant issued under s 121 must direct the offender to appear or to be brought before the court by which the suspended sentence was passed: s 121(5).

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

## **788 Suspended sentences**

TEXT AND NOTES--Repealed: Criminal Justice Act 2003 Sch 37 Pt 7. See now ss 189-194; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 110 et seq.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(vi) Community Orders and Sentences/A. IN GENERAL/789. Meaning of 'community order' and 'community sentence'.

### **(vi) Community Orders and Sentences**

#### **A. IN GENERAL**

#### **789. Meaning of 'community order' and 'community sentence'.**

A 'community order' means any of the following orders:

- 321 (1) a curfew order<sup>1</sup>;
- 322 (2) a community rehabilitation order<sup>2</sup>;
- 323 (3) a community punishment order<sup>3</sup>;
- 324 (4) a community punishment and rehabilitation order<sup>4</sup>;
- 325 (5) a drug treatment and testing order<sup>5</sup>;
- 326 (6) a drug abstinence order<sup>6</sup>;
- 327 (7) an attendance centre order<sup>7</sup>;
- 328 (8) a supervision order<sup>8</sup>;
- 329 (9) an action plan order<sup>9</sup>.

As from a day to be appointed<sup>10</sup>, community orders will also include exclusion orders<sup>11</sup>.

A 'community sentence' means a sentence which consists of or includes one or more community orders<sup>12</sup>. A community order may not be made in respect of an offence for which the sentence is fixed by law<sup>13</sup>. A magistrates' courts may, in considering passing a community sentence, make an order for the purpose of ascertaining whether an offender has any specified Class A drug<sup>14</sup> in his body<sup>15</sup>.

1 Powers of Criminal Courts (Sentencing) Act 2000 s 33(1)(a). As to curfew orders see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 231 et seq.

2 Ibid s 33(1)(b) (amended by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 Pt I para 1(1)(a), (2)). As to community rehabilitation orders see PARA 794 post.

3 Powers of Criminal Courts (Sentencing) Act 2000 s 33(1)(c) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 Pt I para 2(1)(a), (2)). As to community punishment orders see PARA 795 post.

4 Powers of Criminal Courts (Sentencing) Act 2000 s 33(1)(d) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 Pt I para 3(1)(a), (2)). As to community punishment and rehabilitation orders see PARA 796 post.

- 5 Powers of Criminal Courts (Sentencing) Act 2000 s 33(1)(e). As to drug treatment and testing orders see PARA 797 post.
- 6 Ibid s 33(1)(ee) (added by the Criminal Justice and Court Services Act 2000 Sch 7 Pt II paras 160, 161(b)). As to drug abstinence orders see PARA 798 post.
- 7 Powers of Criminal Courts (Sentencing) Act 2000 s 33(1)(f). As to attendance centre orders see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 267 et seq.
- 8 Ibid s 33(1)(g). As to supervision orders see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 250 et seq.
- 9 Ibid s 33(1)(h). As to action plan orders see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 242 et seq.
- 10 At the date at which this volume states the law no such day had been appointed.
- 11 Powers of Criminal Courts (Sentencing) Act 2000 s 33(1)(aa) (prospectively added by the Criminal Justice and Court Services Act 2000 Sch 7 Pt II paras 160, 161(a)). As to exclusion orders see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 231 et seq.
- 12 Powers of Criminal Courts (Sentencing) Act 2000 s 33(2). As to the restrictions on imposing community sentences see PARA 790 post. As to electronic monitoring of community orders see s 36B (as added) (partially in force); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 230.
- 13 See ibid s 34(a). As to other circumstances in which community orders are not available to the courts see s 34(b).
- 14 As to Class A drugs see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 239.
- 15 See the Powers of Criminal Courts (Sentencing) Act 2000 s 36A (added by the Criminal Justice and Court Services Act 2000 s 48).

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 789-791 In general

Powers of Criminal Courts (Sentencing) Act 2000 ss 34-36A, 42, 162, Sch 2 repealed: Criminal Justice Act 2003 Sch 37 Pt 7.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(vi) Community Orders and Sentences/A. IN GENERAL/790. Restrictions on imposing community sentences.

### 790. Restrictions on imposing community sentences.

A magistrates' court<sup>1</sup> must not pass a community sentence<sup>2</sup> on an offender unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated<sup>3</sup> with it, was serious enough to warrant such a sentence<sup>4</sup>. In consequence of the provision made<sup>5</sup> with respect to community punishment and rehabilitation orders<sup>6</sup>, a community sentence must not consist of or include both a community rehabilitation order<sup>7</sup> and a community punishment order<sup>8</sup>. Where a court passes a community sentence<sup>9</sup>: (1) the particular order or orders comprising or forming part of the sentence must be such as in the



opinion of the court is, or taken together are, the most suitable for the offender<sup>10</sup>; and (2) the restrictions on liberty imposed by the order or orders is such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it<sup>11</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 For the meaning of 'community sentence' see PARA 789 ante.

3 For the meaning of 'offence associated with another' see PARA 777 note 5 ante.

4 Powers of Criminal Courts (Sentencing) Act 2000 s 35(1). Sections 35(1) has effect subject to s 59 (as amended) (curfew orders and community punishment orders for persistent petty offenders) (see PARA 799 post): s 35(4) (amended by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 Pt I para 2(1)(b), (2)).

5 le under the Powers of Criminal Courts (Sentencing) Act 2000 s 51 (as amended): see PARA 796 post.

6 As to community punishment and rehabilitation orders see PARA 796 post.

7 As to community rehabilitation orders see PARA 794 post.

8 Powers of Criminal Courts (Sentencing) Act 2000 s 35(2) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 Pt I paras 1(1)(a), (2), 2(1)(a), (2), 3(1)(b), (2)). As to community punishment orders see PARA 795 post.

9 Powers of Criminal Courts (Sentencing) Act 2000 s 35(3) (which is expressed to be subject to s 35(2) (as amended) (see the text and notes 5-8 supra) and to s 69(5) (as amended) (which limits the community orders that may be combined with an action plan order) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 242 et seq)).

10 Ibid s 35(3)(a).

11 Ibid s 35(3)(b). Sections 35(3)(b) has effect subject to s 59 (as amended) (curfew orders and community punishment orders for persistent petty offenders) (see PARA 799 post): s 35(4) (as amended: see note 4 supra).

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 789-791 In general

Powers of Criminal Courts (Sentencing) Act 2000 ss 34-36A, 42, 162, Sch 2 repealed: Criminal Justice Act 2003 Sch 37 Pt 7.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(vi) Community Orders and Sentences/A. IN GENERAL/791. Pre-sentence reports.

### 791. Pre-sentence reports.

In forming any opinion as to the seriousness of the offence<sup>1</sup> or whether any restrictions on the liberty of the offender imposed by the order or orders<sup>2</sup> are commensurate<sup>3</sup>, a magistrates' court<sup>4</sup> must take into account all such information as is available to it about the circumstances

of the offence or (as the case may be) of the offence and the offence or offences associated<sup>5</sup> with it, including any aggravating or mitigating factors<sup>6</sup>. In forming any opinion as to the suitability of an order or orders<sup>7</sup>, a court may take into account any information about the offender which is before it<sup>8</sup>.

A magistrates' court must obtain and consider a pre-sentence report<sup>9</sup> before forming an opinion as to the suitability for the offender of one or more of the following orders<sup>10</sup>:

- 330 (1) a community rehabilitation order<sup>11</sup> which includes additional requirements<sup>12</sup>;
- 331 (2) a community punishment order<sup>13</sup>;
- 332 (3) a community punishment and rehabilitation order<sup>14</sup>;
- 333 (4) a drug treatment and testing order<sup>15</sup>;
- 334 (5) a supervision order which includes authorised requirements<sup>16</sup>.

However, the magistrates' court is not required to obtain such a report if, in the circumstances of the case, it is of the opinion that it is unnecessary to obtain a pre-sentence report<sup>17</sup>. In a case where the offender is aged under 18<sup>18</sup> and the offence is not triable only on indictment<sup>19</sup> and there is no other offence associated with it<sup>20</sup> that is triable only on indictment, the magistrates' court must not form such an opinion unless there exists a previous pre-sentence report obtained in respect of the offender<sup>21</sup>, and the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report<sup>22</sup>.

No community sentence<sup>23</sup> which consists of or includes an order mentioned in heads (1) to (5) above is invalidated by the failure of a magistrates' court to obtain and consider a pre-sentence report before forming an opinion as to the suitability of the order for the offender<sup>24</sup>. In a case where the offender is aged under 18 and the offence is not triable only on indictment and there is no other offence associated with it that is triable only on indictment, the magistrates' court must not form such an opinion unless there exists a previous pre-sentence report obtained in respect of the offender<sup>25</sup>, and the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report<sup>26</sup>.

1    le an opinion as is mentioned in the Powers of Criminal Courts (Sentencing) Act 2000 s 35(1): see PARA 790 ante.

2    As to community orders generally para 789 ante.

3    le an opinion as is mentioned in *ibid* s 35(3)(b): see PARA 790 ante.

4    For the meaning of 'magistrates' court' see PARA 583 ante.

5    For the meaning of 'offence associated with another' see PARA 777 note 5 ante.

6    See the Powers of Criminal Courts (Sentencing) Act 2000 s 36(1).

7    le an opinion as is mentioned in *ibid* s 35(3)(a): see PARA 790 ante.

8    *Ibid* s 36(2).

9    'Pre-sentence report' means a report in writing which: (1) with a view to assisting the court in determining the most suitable method of dealing with an offender, is made or submitted by an appropriate officer; and (2) contains information as to such matters, presented in such manner, as may be prescribed by rules made by the Secretary of State: *ibid* s 162(1). For these purposes, 'an appropriate officer' means: (a) where the offender is aged 18 or over, an officer of a local probation board or a social worker of a local authority social services department; (b) where the offender is aged under 18, an officer of a local probation board, a social worker of a local authority social services department or a member of a youth offending team: s 162(2) (amended by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 Pt I para 4(1)(a), (2)). As to the Secretary of State see PARA 530 note 8 ante. As to local probation boards see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1571. As to youth offending teams see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 346.

The Powers of Criminal Courts (Sentencing) Act 2000 s 156 (disclosure of pre-sentence report to offender etc) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE) applies to any pre-sentence report obtained in pursuance of s 36 (as amended): s 36(10).

Any power of the Secretary of State to make rules or orders under the Powers of Criminal Courts (Sentencing) Act 2000 is exercisable by statutory instrument: s 160(1). Any order made by the Secretary of State under the Powers of Criminal Courts (Sentencing) Act 2000 may make such transitional provision as appears to him necessary or expedient in connection with any provision made by the order: s 160(6). As to the making of rules and orders under the Powers of Criminal Courts (Sentencing) Act 2000 see further CRIMINAL LAW, EVIDENCE AND PROCEDURE, and SENTENCING AND DISPOSITION OF OFFENDERS. At the date at which this volume states the law no rules had been made under s 162(1).

10 Ibid s 36(4).

11 As to community rehabilitation orders see PARA 794 post.

12 Powers of Criminal Courts (Sentencing) Act 2000 s 36(3)(a) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 Pt I para 1(1)(a), (2)). The reference in the text to additional requirements is to those which may be authorised by s 42, Sch 2 (as amended).

13 Powers of Criminal Courts (Sentencing) Act 2000 s 36(3)(b) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 Pt I para 2(1)(a), (2)). As to community punishment orders see PARA 795 post.

14 Powers of Criminal Courts (Sentencing) Act 2000 s 36(3)(c) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 Pt I para 3(1)(a), (2)). As to community punishment and rehabilitation orders see PARA 796 post.

15 Powers of Criminal Courts (Sentencing) Act 2000 s 36(3)(d). As to drug treatment and testing orders see PARA 797 post.

16 Ibid s 36(3)(e). The reference in the text to authorised requirements is to those authorised by s 63, Sch 6 (as amended): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 259.

17 Ibid s 36(5).

18 As to the determination of the age of a person see PARA 738 ante.

19 For the meaning of 'indictable offence' see PARA 653 ante.

20 For the meaning of 'offence associated with another' see PARA 777 note 5 ante.

21 Powers of Criminal Courts (Sentencing) Act 2000 s 36(6)(a).

22 Ibid s 36(6)(b).

23 For the meaning of 'community sentence' see PARA 789 ante.

24 Powers of Criminal Courts (Sentencing) Act 2000 s 36(7). As to pre-sentence reports on appeal see ss 36(7)(a), (b), (8).

25 Ibid s 36(9)(a).

26 Ibid s 39(9)(b).

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 789-791 In general

Powers of Criminal Courts (Sentencing) Act 2000 ss 34-36A, 42, 162, Sch 2 repealed: Criminal Justice Act 2003 Sch 37 Pt 7.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(vi) Community Orders and Sentences/B. COMMUNITY ORDERS AVAILABLE FOR OFFENDERS OF ANY AGE

## ***B. COMMUNITY ORDERS AVAILABLE FOR OFFENDERS OF ANY AGE***

### **UPDATE**

#### **792-793 Curfew orders, Exclusion orders**

Material relating to this part has been revised and published under the title SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 231 et seq.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(vi) Community Orders and Sentences/C. COMMUNITY ORDERS AVAILABLE WHERE OFFENDER AGED 16 OR OVER/794. Community rehabilitation orders.

## ***C. COMMUNITY ORDERS AVAILABLE WHERE OFFENDER AGED 16 OR OVER***

### **794. Community rehabilitation orders.**

Where a person aged 16<sup>1</sup> or over is convicted of an offence and the magistrates' court<sup>2</sup> by or before which he is convicted is of the opinion that his supervision is desirable in the interests of securing his rehabilitation<sup>3</sup>, or protecting the public from harm from him or preventing the commission by him of further offences<sup>4</sup>, the court may make a community rehabilitation order<sup>5</sup> requiring him to be under supervision for a period specified in the order of not less than six months nor more than three years<sup>6</sup>. A community rehabilitation order must specify the petty sessions area<sup>7</sup> in which the offender resides or will reside<sup>8</sup>. If the offender is aged 18 or over at the time when the community rehabilitation order is made, he is required<sup>9</sup> to be under the supervision of an officer of a local probation board<sup>10</sup> appointed for or assigned to the petty sessions area specified in the order<sup>11</sup>. If the offender is aged under 18 at that time, he is required<sup>12</sup> to be under the supervision of an officer of a local probation board appointed for or assigned to the petty sessions area specified in the order<sup>13</sup> or a member of a youth offending team<sup>14</sup> established by a local authority specified in the order<sup>15</sup>.

Before making a community rehabilitation order, the magistrates' court must explain to the offender in ordinary language<sup>16</sup>: (1) the effect of the order<sup>17</sup>; (2) the consequences which may follow<sup>18</sup> if he fails to comply with any of the requirements of the order<sup>19</sup>; and (3) that the court has power<sup>20</sup> to review the order on the application either of the offender or of the responsible officer<sup>21</sup> of the offender<sup>22</sup>.

On making a community rehabilitation order, the magistrates' court may, if it thinks it expedient for the purpose of the offender's reformation, allow any person who consents to do so to give security for the good behaviour of the offender<sup>23</sup>. The magistrates' court by which a community rehabilitation order is made must forthwith give copies of the order to:

- 335 (a) an officer of a local probation board assigned to the court (if the offender is aged 18 or over)<sup>24</sup>; or  
 336 (b) an officer of a local probation board or member of a youth offending team so assigned (if the offender is aged under 18)<sup>25</sup>,

and he must give a copy to the offender, to the responsible officer and to the person in charge of any institution in which the offender is required by the order to reside<sup>26</sup>. The magistrates' court by which such an order is made must also, except where it itself acts for the petty sessions area specified in the order, send to the justices' chief executive<sup>27</sup> for that area<sup>28</sup> a copy of the order<sup>29</sup>, and such documents and information relating to the case as it considers likely to be of assistance to a magistrates' court acting for that area in the exercise of its functions in relation to the order<sup>30</sup>. An offender in respect of whom a community rehabilitation order is made must keep in touch with the responsible officer in accordance with such instructions as he may from time to time be given by that officer<sup>31</sup>.

Provision is made in relation to the additional requirements which may be included in a community rehabilitation order<sup>32</sup>, the breach, revocation and amendment of such rehabilitation orders<sup>33</sup> and in relation to offenders residing in Scotland or Northern Ireland<sup>34</sup>. The Secretary of State<sup>35</sup> has powers to make orders in relation to community rehabilitation orders<sup>36</sup>.

- 1 As to the determination of the age of a person see PARA 738 ante.
- 2 For the meaning of 'magistrates' court' see PARA 583 ante.
- 3 Powers of Criminal Courts (Sentencing) Act 2000 s 41(1)(a).
- 4 Ibid s 41(1)(b).
- 5 Ie subject to ibid ss 34-36 (as amended): see PARAS 789-791 ante. As to community rehabilitation orders see further CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1370 et seq; SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 167 et seq. Community rehabilitation orders are supervised by the National Probation Service for England and Wales: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 755.
- 6 Ibid s 41(1), (2) (s 41(2) amended by the Criminal Justice and Court Services Act 2000 s 43(3)(a)).
- 7 As to petty sessions see PARA 591 et seq ante.
- 8 Powers of Criminal Courts (Sentencing) Act 2000 s 41(3) (amended by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 Pt I para 1(1)(a), (2)).
- 9 Ie subject to the Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 18 (as amended) (offender's change of area): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 195.
- 10 As to local probation boards see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 737 et seq.
- 11 Powers of Criminal Courts (Sentencing) Act 2000 s 41(4) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 Pt I paras 1(1)(a), (2), 4(1)(a), (2)).
- 12 Ie subject to the Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 18 (as amended) (offender's change of area): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 195.
- 13 Ibid s 41(5)(a) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 Pt I para 4(1)(a), (2)).
- 14 As to youth offending teams see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 346.
- 15 Powers of Criminal Courts (Sentencing) Act 2000 s 41(5)(b). If an order specifies a local authority, the authority specified must be the local authority within whose area it appears to the court that the offender resides or will reside: s 41(5).
- 16 Ibid s 41(7) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 Pt I para 1(1)(a), (2)).

17 Powers of Criminal Courts (Sentencing) Act 2000 s 41(7)(a). This includes any additional requirements proposed to be included in the order in accordance with s 42 (as amended) (see the text to note 32 *infra*): s 41(7)(a).

18 *Ie* under *ibid* Sch 3 Pt II (as amended): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 167 *et seq*.

19 *Ibid* s 41(7)(b).

20 *Ie* under *ibid* Sch 3 Pts III, IV (as amended): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 167.

21 'Responsible officer', in relation to an offender who is subject to a community rehabilitation order, means the officer of a local probation board or member of a youth offending team responsible for his supervision: *ibid* s 41(6) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 Pt I para 4(1)(b), (2)).

22 Powers of Criminal Courts (Sentencing) Act 2000 s 41(7)(c).

As from a day to be appointed any affected person may apply for the review of a community rehabilitation order: s 41(7)(c) (prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 Pt II paras 160, 165(a)). A person is an affected person for these purposes in relation to a community rehabilitation order if: (1) a requirement under the Powers of Criminal Courts (Sentencing) Act 2000 s 36B(1) (as added) (partially in force) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 230) is included in the order by virtue of his consent; or (2) a requirement is included in the order under Sch 2 para 8(1) (prospectively added) for the purpose, or partly for the purpose, of protecting him from being approached by the offender: s 41(12) (prospectively added by the Criminal Justice and Court Services Act 2000 s 51). At the date at which this volume states the law no such days had been appointed.

23 Powers of Criminal Courts (Sentencing) Act 2000 s 41(8) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 Pt I para 1(1)(a), (2)).

24 Powers of Criminal Courts (Sentencing) Act 2000 s 41(9)(a) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 Pt I para 4(1)(a), (2)).

25 Powers of Criminal Courts (Sentencing) Act 2000 s 41(9)(b) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 Pt I para 4(1)(a), (2)).

26 Powers of Criminal Courts (Sentencing) Act 2000 s 41(9). As from a day to be appointed the magistrates' court by which such an order is made must give to any affected person any information relating to the order which the court considers it appropriate for him to have: s 41(9A) (prospectively added by the Criminal Justice and Court Services Act 2000 Sch 7 Pt II paras 160, 165(b)). At the date at which this volume states the law no such day had been appointed.

27 As to the justices' chief executive see PARA 624 *et seq ante*.

28 Powers of Criminal Courts (Sentencing) Act 2000 s 41(10) (amended by the Access to Justice Act 1999 (Transfer of Justices' Clerks' Functions) Order 2001, SI 2001/618, art 5(1), (2)).

29 Powers of Criminal Courts (Sentencing) Act 2000 s 41(10)(a).

30 *Ibid* s 41(10)(b).

31 *Ibid* s 41(11) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 Pt I para 1(1)(a), (2)). The offender must also notify the responsible officer of any change of address: Powers of Criminal Courts (Sentencing) Act 2000 s 41(11).

32 See *ibid* s 42, Sch 2 (as amended).

33 See *ibid* s 43, Sch 3 (as amended).

34 See *ibid* s 44, Sch 4 (as amended).

35 As to the Secretary of State see PARA 530 note 8 *ante*.

36 See the Powers of Criminal Courts (Sentencing) Act 2000 s 45 (as amended). At the date at which this volume states the law no orders had been made under s 45. As to the making of orders generally see PARA 791 note 9 *ante*.

## UPDATE

## **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

## **794-799 Community Orders available where Offender aged 16 or over**

Powers of Criminal Courts (Sentencing) Act 2000 ss 41-59 repealed: Criminal Justice Act 2003 Sch 37 Pt 7.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(vi) Community Orders and Sentences/C. COMMUNITY ORDERS AVAILABLE WHERE OFFENDER AGED 16 OR OVER/795. Community punishment orders.

### **795. Community punishment orders.**

Where a person aged 16<sup>1</sup> or over is convicted of an offence punishable with imprisonment<sup>2</sup>, the magistrates' court<sup>3</sup> by or before which he is convicted may make a community punishment order<sup>4</sup> requiring him to perform unpaid work<sup>5</sup>. The number of hours which a person may be required to work under a community punishment order are specified in the order and must be in the aggregate<sup>6</sup> not less than 40<sup>7</sup> and not more than 240<sup>8</sup>. Where a magistrates' court makes community punishment orders in respect of two or more offences of which the offender has been convicted by or before the court, the court may direct that the hours of work specified in any of those orders are to be concurrent with or additional to those specified in any other of those orders, but so that the total number of hours which are not concurrent does not exceed the maximum mentioned above<sup>9</sup>. A magistrates' court must not make a community punishment order in respect of an offender unless: (1) after hearing (if the court thinks it necessary) an appropriate officer<sup>10</sup>, the court is satisfied that the offender is a suitable person to perform work under such an order<sup>11</sup>; and (2) it is satisfied that provision for him to perform work under such an order can be made under the arrangements for persons to perform work under such orders which exist in the petty sessions area<sup>12</sup> in which he resides or will reside<sup>13</sup>. A community punishment order<sup>14</sup> must specify the petty sessions area in which the offender resides or will reside<sup>15</sup>, and, where the offender is aged under 18 at the time the order is made, may also specify a local authority for the purposes of cases<sup>16</sup> where the functions are to be discharged by member of a youth offending team<sup>17</sup>.

Before making a community punishment order, the magistrates' court must explain to the offender in ordinary language<sup>18</sup>: (a) the purpose and effect of the order<sup>19</sup>; (b) the consequences which may follow<sup>20</sup> if he fails to comply with any of the requirements of the order<sup>21</sup>; and (c) that the court has power<sup>22</sup> to review the order on the application either of the offender or of the responsible officer<sup>23</sup>.

The magistrates' court by which a community punishment order is made must forthwith give copies of the order to<sup>24</sup>:

- 337 (i) an officer of a local probation board assigned to the court (if the offender is aged 18 or over)<sup>25</sup>; or
- 338 (ii) an officer of a local probation board or member of a youth offending team so assigned (if the offender is aged 18 or over)<sup>26</sup>,

and he must give a copy to the offender and to the responsible officer<sup>27</sup>. The magistrates' court by which such an order is made must also, except where it itself acts for the petty sessions area specified in the order, send to the justices' chief executive<sup>28</sup> for that area<sup>29</sup> a copy of the order<sup>30</sup> and such documents and information relating to the case as it considers likely to be of assistance to a court acting for that area in the exercise of its functions in relation to the order<sup>31</sup>.

Provision is made in relation to the obligations of a person subject to a community punishment order<sup>32</sup>, the breach, revocation and amendment of such orders<sup>33</sup> and in relation to offenders residing in Scotland or Northern Ireland<sup>34</sup>.

1 As to the determination of the age of a person see PARA 738 ante.

2 Any reference in the Powers of Criminal Courts (Sentencing) Act 2000 to an offence punishable with imprisonment is to be construed without regard to any prohibition or restriction imposed by or under the Powers of Criminal Courts (Sentencing) Act 2000 or any Act on the imprisonment of young offenders: s 164(2).

3 For the meaning of 'magistrates' court' see PARA 583 ante.

4 Ie subject to the Powers of Criminal Courts (Sentencing) Act 2000 ss 34-36 (as amended); see PARAS 789-791 ante. As to community punishment orders see further CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1371 et seq; SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 167.

5 Ibid s 46(1), (2) (s 46(2) amended by the Criminal Justice and Court Services Act 2000 s 44(3)(a)). The reference to unpaid work in the text is a reference to the performance of unpaid work in accordance with the Powers of Criminal Courts (Sentencing) Act 2000 s 47 (as amended): s 46(1).

6 Ibid s 46(3) (amended by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 Pt I para 2(1)(a), (2)).

7 Powers of Criminal Courts (Sentencing) Act 2000 s 46(3)(a).

8 Ibid s 46(3)(b). The Secretary of State has power to amend s 46(3) by order: see s 50 (as amended). At the date at which this volume states the law no orders had been made under s 50. As to the making of orders generally see PARA 791 note 9 ante. As to the Secretary of State see PARA 530 note 8 ante.

9 Ibid s 46(8) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 Pt I para 2(1)(b), (2)).

10 For these purposes, 'an appropriate officer' means: (1) in the case of an offender aged 18 or over, an officer of a local probation board or social worker of a local authority social services department; and (2) in the case of an offender aged under 18, an officer of a local probation board, a social worker of a local authority social services department or a member of a youth offending team: Powers of Criminal Courts (Sentencing) Act 2000 s 46(5) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 Pt I para 4(1)(a), (2)). As to local probation boards see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 737 et seq. As to youth offending teams see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 346.

11 Powers of Criminal Courts (Sentencing) Act 2000 s 46(4) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 Pt I para 2(1)(a), (2)).

12 As to petty sessions see PARA 591 et seq ante.

13 Powers of Criminal Courts (Sentencing) Act 2000 s 46(6) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 Pt I para 2(1)(a), (2)). The Powers of Criminal Courts (Sentencing) Act 2000 s 46(6) (as amended) has effect subject to Sch 4 paras 3, 4 (as amended) (transfer of order to Scotland or Northern Ireland): s 46(7).

14 Ibid s 46(9) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 Pt I para 2(1)(a), (2)).

15 Powers of Criminal Courts (Sentencing) Act 2000 s 46(9)(a).

16 Ie under ibid s 47(5)(b).

17 Ibid s 46(9)(b). Where an order specifies a local authority for the purposes of cases where functions are to be discharged by a member of a youth offending team, the authority specified must be the local authority within whose area it appears to the magistrates' court that the offender resides or will reside: s 46(9).



- 18 Ibid s 46(10) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 Pt I para 2(1)(a), (2)).
- 19 Powers of Criminal Courts (Sentencing) Act 2000 s 46(10)(a). In particular the magistrates' court must explain to the offender in ordinary language the requirements of the order as specified in s 47(1)-(3) (as amended): s 46(10)(a).
- 20 Ie under ibid Sch 3 Pt II (as amended): see SENTENCING AND DISPOSITION OF OFFENDERS.
- 21 Ibid s 46(10)(b).
- 22 Ie under ibid Sch 3 Pts III, IV (as amended): see SENTENCING AND DISPOSITION OF OFFENDERS.
- 23 Ibid s 46(10)(c). For these purposes, 'responsible officer', in relation to an offender subject to a community punishment order, means: (1) if the offender is aged 18 or over at the time when the order is made, an officer of a local probation board appointed for or assigned to the petty sessions area specified in the order; (2) if the offender is aged under 18 at that time, a member of a youth offending team established by a local authority specified in the order: see s 46(13) (amended by the Criminal Justice and Court Services Act 2000 s 75, Sch 7 Pt I paras 2(1)(a), (2), 160, 168, Sch 8); the Powers of Criminal Courts (Sentencing) Act 2000 s 47(4) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 Pt II paras 160, 169(a)); and the Powers of Criminal Courts (Sentencing) Act 2000 s 47(5)(b).
- 24 Ibid s 46(11) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 Pt I para 2(1)(a), (2)).
- 25 Powers of Criminal Courts (Sentencing) Act 2000 s 46(11)(a) (s 46(11)(a), (b) amended by the Criminal Justice and Court Services Act 2000 Sch 7 Pt I para 4(1)(a), (2)).
- 26 Powers of Criminal Courts (Sentencing) Act 2000 s 46(11)(b) (as amended: see note 25 supra).
- 27 Ibid s 46(11).
- 28 As to the justices' chief executive see PARA 624 et seq ante.
- 29 Powers of Criminal Courts (Sentencing) Act 2000 s 46(12) (amended by the Access to Justice Act 1999 (Transfer of Justices' Clerks' Functions) Order 2001, SI 2001/618, art 5(1), (3)).
- 30 Powers of Criminal Courts (Sentencing) Act 2000 s 46(12)(a).
- 31 Ibid s 46(12)(b).
- 32 See ibid s 47 (as amended).
- 33 See ibid s 48, Sch 3 (as amended).
- 34 See ibid s 49, Sch 4 (as amended).

## UPDATE

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### **794-799 Community Orders available where Offender aged 16 or over**

Powers of Criminal Courts (Sentencing) Act 2000 ss 41-59 repealed: Criminal Justice Act 2003 Sch 37 Pt 7.

Sentences/C. COMMUNITY ORDERS AVAILABLE WHERE OFFENDER AGED 16 OR OVER/796.  
Community punishment and rehabilitation orders.

### **796. Community punishment and rehabilitation orders.**

Where a person aged 16<sup>1</sup> or over is convicted of an offence punishable with imprisonment<sup>2</sup> and the magistrates' court<sup>3</sup> by or before which he is convicted is of the opinion that the making of an order is desirable in the interests of<sup>4</sup>:

- 339 (1) securing the rehabilitation of the offender<sup>5</sup>; or
- 340 (2) protecting the public from harm from him or preventing the commission by him of further offences<sup>6</sup>,

the court may make a community punishment and rehabilitation order<sup>7</sup> requiring him both to be under supervision for a period specified in the order, being not less than 12 months nor more than three years<sup>8</sup>, and to perform unpaid work for a number of hours so specified, being in the aggregate not less than 40 nor more than 100<sup>9</sup>. The provisions relating to community punishment orders<sup>10</sup> and community rehabilitation orders<sup>11</sup> apply to community punishment and rehabilitation orders<sup>12</sup>. Provision is made in relation to the breach, revocation and amendment of such orders<sup>13</sup> and in relation to offenders residing in Scotland and Northern Ireland<sup>14</sup>.

1 As to the determination of the age of a person see PARA 738 ante.

2 Any reference in the Powers of Criminal Courts (Sentencing) Act 2000 to an offence punishable with imprisonment is to be construed without regard to any prohibition or restriction imposed by or under the Powers of Criminal Courts (Sentencing) Act 2000 or any Act on the imprisonment of young offenders: s 164(2).

3 For the meaning of 'magistrates' court' see PARA 583 ante.

4 Powers of Criminal Courts (Sentencing) Act 2000 s 51(1), (3) (s 51(3) amended by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 Pt I para 3(1)(a), (2)).

5 Powers of Criminal Courts (Sentencing) Act 2000 s 51(3)(a).

6 Ibid s 51(3)(b).

7 Ie subject to ibid ss 34-36 (as amended): see PARAS 789-791 ante. As to community punishment and rehabilitation orders see further CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARAS 1370-1373; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 167.

8 Ibid s 51(1)(a), (2) (s 51(2) amended by the Criminal Justice and Court Services Act 2000 s 45(3)(a)).

9 Powers of Criminal Courts (Sentencing) Act 2000 s 51(1)(b), (2) (s 51(2) as amended: see note 8 supra).

10 Ie ibid ss 46, 47 (both as amended). As to community punishment orders see PARA 795 ante.

11 Ie ibid s 41 (as amended), s 42 (as amended), Sch 2 (as amended). As to community rehabilitation orders see PARA 794 ante.

12 See ibid s 51(4)-(6) (as amended).

13 Ie ibid Sch 3 (as amended): see SENTENCING AND DISPOSITION OF OFFENDERS.

14 See ibid s 51(4)-(6). As to the making and amendment of orders relating to offenders residing in Scotland and Northern Ireland see Sch 4 (as amended).

## **UPDATE**

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### **794-799 Community Orders available where Offender aged 16 or over**

Powers of Criminal Courts (Sentencing) Act 2000 ss 41-59 repealed: Criminal Justice Act 2003 Sch 37 Pt 7.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(vi) Community Orders and Sentences/C. COMMUNITY ORDERS AVAILABLE WHERE OFFENDER AGED 16 OR OVER/797. Drug treatment and testing orders.

### **797. Drug treatment and testing orders.**

Where a person aged 16<sup>1</sup> or over is convicted of an offence, the magistrates' court<sup>2</sup> by or before which he is convicted may make a drug treatment and testing order<sup>3</sup> which has effect for a period specified in the order of not less than six months nor more than three years (this is referred to as 'the treatment and testing period')<sup>4</sup>. A magistrates' court must not make a drug treatment and testing order: (1) in respect of an offender unless it is satisfied that he is dependent on or has a propensity to misuse drugs<sup>5</sup>, and that his dependency or propensity is such as requires and may be susceptible to treatment<sup>6</sup>; (2) unless the magistrates' court has been notified by the Secretary of State<sup>7</sup> that arrangements for implementing drug treatment and testing orders are available in the area proposed to be specified<sup>8</sup> and the notice has not been withdrawn<sup>9</sup>; and (3) unless the offender expresses his willingness to comply with its requirements<sup>10</sup>. For the purpose of ascertaining whether the offender has any drug in his body, the magistrates' court may by order require him to provide samples of such description as it may specify<sup>11</sup>, but the court must not make such an order unless the offender expresses his willingness to comply with its requirements<sup>12</sup>.

Before making a drug treatment and testing order, the magistrates' court must explain to the offender in ordinary language:

- 341 (a) the effect of the order and of the requirements proposed to be included in it<sup>13</sup>;
- 342 (b) the consequences which may follow<sup>14</sup> if he fails to comply with any of those requirements<sup>15</sup>;
- 343 (c) that the order will be periodically reviewed<sup>16</sup> at intervals as provided for in the order<sup>17</sup>; and
- 344 (d) that the order may be reviewed<sup>18</sup> on the application either of the offender or of the responsible officer<sup>19</sup>.

Provision is made in relation to the treatment and testing requirements, supervision and periodic review of drug treatment and testing orders<sup>20</sup> and the breach, revocation and amendment of such orders<sup>21</sup>. The magistrates' court is required to give copies of the drug treatment and testing order to other courts and persons<sup>22</sup>.

The Secretary of State has power to make orders in relation to drug treatment and testing orders<sup>23</sup>.

1 As to the determination of the age of a person see PARA 738 ante.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3    Ie subject to the Powers of Criminal Courts (Sentencing) Act 2000 ss 34-36 (as amended): see PARAS 789-791 ante. As to drug treatment and testing orders see further CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARAS 1374-1377; SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 295, 296.

4    Ibid s 52(1)(a), (2). A drug treatment and testing order includes the requirements and provisions mentioned in ss 53, 54 (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 295, 296): s 52(1)(b). However, s 52 (as amended) does not apply in relation to an offence committed before 30 September 1998: s 52(1).

5    Ibid s 52(3)(a).

6    Ibid s 52(3)(b).

7    As to the Secretary of State see PARA 530 note 8 ante.

8    Ie specified in the order under the Powers of Criminal Courts (Sentencing) Act 2000 s 54(1).

9    Ibid s 52(5).

10   Ibid s 52(7).

11   Ibid s 52(4). As from a day to be appointed s 52(4) will only apply where an offender, at the time of his conviction, was aged under 18: s 52(4) (prospectively amended by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 Pt II paras 160, 170). At the date at which this volume states the law no such day had been appointed.

12   Powers of Criminal Courts (Sentencing) Act 2000 s 52(4). See note 11 supra.

13   Ibid s 52(6)(a).

14   Ie under ibid Sch 3 Pt II (as amended): see SENTENCING AND DISPOSITION OF OFFENDERS.

15   Ibid s 52(6)(b).

16   Ie by virtue of ibid s 54(6).

17   Ibid s 52(6)(c).

18   Ie under ibid Sch 3 Pts III, IV (as amended). 'Responsible officer', in relation to an offender who is subject to a drug treatment and testing order, means the officer of a local probation board responsible for his supervision: ss 52(6), 54(3) (s 54(3) amended by the Criminal Justice and Court Services Act 2000 Sch 7 Pt I para 4(1)(b), (2)). As to local probation boards see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 737 et seq.

20   See the Powers of Criminal Courts (Sentencing) Act 2000 ss 53-55 (as amended).

21   See ibid s 56, Sch 3 (as amended).

22   See ibid s 57 (as amended).

23   See ibid s 58 (prospectively amended). At the date at which this volume states the law no orders had been made under s 58 (prospectively amended). As to the making of orders generally see PARA 791 note 9 ante.

## **UPDATE**

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### **794-799 Community Orders available where Offender aged 16 or over**

Powers of Criminal Courts (Sentencing) Act 2000 ss 41-59 repealed: Criminal Justice Act 2003 Sch 37 Pt 7.

## **797 Drug treatment and testing orders**

NOTE 18--2000 Act s 54(3) further amended: SI 2008/912.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(vi) Community Orders and Sentences/C. COMMUNITY ORDERS AVAILABLE WHERE OFFENDER AGED 16 OR OVER/798. Drug abstinence orders.

## **798. Drug abstinence orders.**

Where a person aged 18<sup>1</sup> or over is convicted of an offence, the magistrates' court<sup>2</sup> by or before which he is convicted may make a drug abstinence order<sup>3</sup> which requires the offender to abstain from misusing specified Class A drugs<sup>4</sup>, and to provide, when instructed to do so by the responsible officer<sup>5</sup>, any sample mentioned in the instruction for the purpose of ascertaining whether he has any specified Class A drug in his body<sup>6</sup>. The Secretary of State may make rules for regulating the provision of samples in pursuance of such instructions<sup>7</sup>.

A drug abstinence order provides that, for the period for which the order has effect, the offender is to be under the supervision of a person, being a person of a description specified in an order made by the Secretary of State<sup>8</sup>, and has effect for a period specified in the order of not less than six months nor more than three years<sup>9</sup>.

The magistrates' court must not make a drug abstinence order in respect of an offender unless:

- 345 (1) in the opinion of the court the offender is dependent on, or has a propensity to misuse, specified Class A drugs<sup>10</sup>, and the offence in question is a trigger offence or, in the opinion of the magistrates' court, the misuse by the offender of any specified Class A drug caused or contributed to the offence in question<sup>11</sup>;
- 346 (2) the court has been notified by the Secretary of State that arrangements for implementing such orders are available in the area proposed to be specified in the order<sup>12</sup> and the notice has not been withdrawn<sup>13</sup>.

Before making a drug abstinence order, the court must explain to the offender in ordinary language: (a) the effect of the order and of the requirements proposed to be included in it<sup>14</sup>; (b) the consequences which may follow<sup>15</sup> if he fails to comply with any of those requirements<sup>16</sup>; and (c) that the order may be reviewed<sup>17</sup> on the application either of the offender or of the responsible officer<sup>18</sup>.

Provision is made for the supervision of drug abstinence orders and for the breach, revocation and amendment of such orders<sup>19</sup>.

1 As to the determination of the age of a person see PARA 738 ante.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 Ie subject to the Powers of Criminal Courts (Sentencing) Act 2000 ss 34-36 (as amended): see PARAS 789-791 ante. As to drug abstinence orders see further CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1370; SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 201.

4 Ibid s 58A(1)(a), (2) (ss 58A, 58B both added by the Criminal Justice and Court Services Act 2000 s 47). As to Class A drugs see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 239.

5 'Responsible officer', in relation to an offender who is subject to a drug abstinence order, means the person who is responsible for his supervision: Powers of Criminal Courts (Sentencing) Act 2000 s 58A(5) (as added: see note 4 supra).

6 Ibid s 58A(1)(b), (2) (as added: see note 4 supra). The function of giving instructions for the purposes of s 58A(1)(b) (as added) is exercised in accordance with guidance given from time to time by the Secretary of State: s 58A(6) (as so added). As to the Secretary of State see PARA 530 note 8 ante.

7 Ibid s 58A(8) (as added: see note 4 supra). At the date at which this volume states the law no such rules had been made. As to the making of rules and orders generally see PARA 791 note 9 ante.

8 Ibid s 58A(4) (as added: see note 4 supra). In the exercise of the power under s 58A(4) (as added) the Secretary of State has made the Drug Abstinence Order (Responsible Officer) (No 2) Order 2001, SI 2001/3494.

9 Powers of Criminal Courts (Sentencing) Act 2000 s 58A(7) (as added: see note 4 supra).

10 Ibid s 58A(3)(a) (as added: see note 4 supra).

11 Ibid s 58A(3)(b) (as added: see note 4 supra).

12 Ie under ibid s 54(1) as applied by s 58B(2) (as added).

13 Ibid s 58A(9) (as added: see note 4 supra).

14 Ibid s 58B(1)(a) (as added: see note 4 supra).

15 Ie under ibid s 56, Sch 3 Pt II (as amended).

16 Ibid s 58B(1)(b) (as added: see note 4 supra).

17 Ie under ibid Sch 3 Pts III, IV (as amended).

18 Ibid s 58B(1)(c) (as added: see note 4 supra).

19 See ibid s 58B(2), (3) (as added).

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 794-799 Community Orders available where Offender aged 16 or over

Powers of Criminal Courts (Sentencing) Act 2000 ss 41-59 repealed: Criminal Justice Act 2003 Sch 37 Pt 7.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(vi) Community Orders and Sentences/C. COMMUNITY ORDERS AVAILABLE WHERE OFFENDER AGED 16 OR OVER/799. Curfew orders and community punishment orders for persistent petty offenders.

### 799. Curfew orders and community punishment orders for persistent petty offenders.

Where a person aged 16<sup>1</sup> or over is convicted of an offence<sup>2</sup> and the magistrates' court<sup>3</sup> by or before which he is convicted is satisfied that one or more fines imposed on the offender in respect of one or more previous offences have not been paid<sup>4</sup>, and if a fine were imposed in an amount which was commensurate with the seriousness of the offence, the offender would not have sufficient means to pay it<sup>5</sup>, and if it were not so satisfied, the court would be minded to impose a fine in respect of the offence<sup>6</sup>, the court may make a curfew order<sup>7</sup> or a community punishment order<sup>8</sup> in respect of the offender instead of imposing a fine<sup>9</sup>. A magistrates' court must not make an order under such circumstances unless it has been notified by the Secretary of State<sup>10</sup> that arrangements for implementing orders so made are available in the relevant area<sup>11</sup> and the notice has not been withdrawn<sup>12</sup>.

1 As to the determination of the age of a person see PARA 738 ante.

2 Powers of Criminal Courts (Sentencing) Act 2000 s 59(1)(a).

3 For the meaning of 'magistrates' court' see PARA 583 ante.

4 Powers of Criminal Courts (Sentencing) Act 2000 s 59(1)(b), (2)(a).

5 Ibid s 59(1)(b), (2)(b).

6 Ibid s 59(1)(c).

7 Ibid s 59(3)(a) (which is expressed subject to the provisions of s 59(5) and s 59(7) (see the text and notes 10-12 infra)). The reference in the text to a curfew order is a reference to a curfew order under s 37(1): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 231 et seq.

8 Ibid s 59(3)(b) (amended by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 Pt I para 2(1)(a), (2)). The Powers of Criminal Courts (Sentencing) Act 2000 s 59(3)(b) (as amended) is expressed subject to s 59(6) (as amended) and s 59(7) (see the text and notes 10-12 infra). The reference in the text to a community punishment order is an order under s 46(1): see PARA 795 ante.

9 Ibid s 59(3). As to curfew and community service orders for persistent offenders see further ss 59(4)-(6) (as amended).

10 As to the Secretary of State see PARA 530 note 8 ante.

11 For these purposes, 'the relevant area' means: (1) in relation to a curfew order, the area in which the place proposed to be specified in the order is situated; (2) in relation to a community punishment order, the area proposed to be specified in the order: Powers of Criminal Courts (Sentencing) Act 2000 s 59(8) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 Pt I para 2(1)(a), (2)).

12 Powers of Criminal Courts (Sentencing) Act 2000 s 59(7).

## **UPDATE**

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### **794-799 Community Orders available where Offender aged 16 or over**

Powers of Criminal Courts (Sentencing) Act 2000 ss 41-59 repealed: Criminal Justice Act 2003 Sch 37 Pt 7.

## **UPDATE**

### **800-815 Attendance centre orders ... Mitigation of imprisonment**

Material relating to this part has been revised and published under the title SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 267 et seq.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(viii) Hospital and Guardianship Orders

## **(viii) Hospital and Guardianship Orders**

### **UPDATE**

#### **816 Hospital and Guardianship Orders**

Material relating to this part has been revised and published under the title SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 332 et seq.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(ix) Police Property, Restitution and Compensation/817. Police property.

## **(ix) Police Property, Restitution and Compensation**

### **817. Police property.**

Where property has come into the possession of the police in connection with their investigation of a suspected offence<sup>1</sup> or under certain statutory provisions<sup>2</sup>, a magistrates' court<sup>3</sup> has power to direct the delivery of the property to its owner on the application of the person claiming it<sup>4</sup>.

1 Eg under the Police and Criminal Evidence Act 1984 s 1(6) (as amended) (power stop and search) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 865), s 8(2) (search for evidence of serious arrestable offence) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 873), s 18(2) (entry and search after arrest) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 885), and s 19 (as amended) (general power of seizure) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 886).

2 Eg under the Misuse of Drugs Act 1971 s 23(2)(c) (power to search and obtain evidence) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 781) or the Theft Act 1968 s 26(3) (search for stolen goods) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 306).

3 For the meaning of 'magistrates' court' see PARA 583 ante.

4 See the Police (Property) Act 1897 s 1(1) (amended by the Theft Act 1968 ss 33(3), 36(2), (3), Sch 3 Pt III; the Criminal Justice Act 1972 s 58; the Consumer Credit Act 1974 s 192(3)(b), Sch 5 Pt I; the Statute Law (Repeals) Act 1989; and the Police (Property) Act 1997 s 4(1)). As to the disposal of property in police possession see further POLICE vol 36(1) (2007 Reissue) PARA 520.

### **UPDATE**

#### **772-897 Deferment of sentence ... Abandonment of appeal**



SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

## UPDATE

### **818 Orders for restitution, compensation and deprivation of property**

Material relating to this part has been revised and published under the title SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 375 et seq, 388, 481.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(ix) Police Property, Restitution and Compensation/819. Return of property taken from accused.

### **819. Return of property taken from accused.**

Where a summons or warrant has been issued<sup>1</sup> requiring a person to appear or to be brought before a magistrates' court<sup>2</sup> to answer an information, or where a person has been arrested without a warrant for an offence, and property has afterwards been taken from him<sup>3</sup>, the police must report the taking of the property and details of it to the magistrates' court which deals with the case<sup>4</sup>. The magistrates' court may then, if it is of the opinion that the whole or part of the property can be returned to the accused consistently with the interests of justice and his safe custody, direct that the property be returned to the accused or to such other person as he may require<sup>5</sup>. The order must be made while the defendant is before the magistrates' court and not after conviction<sup>6</sup>.

1 As to summonses and warrants of arrest see PARA 687 et seq ante.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 The power extends only to property taken from his person and therefore does not extend to property seized from an accused's home: *R v Southampton Magistrates' Court, ex p Newman* [1988] 3 All ER 669, DC.

4 Magistrates' Courts Act 1980 s 48.

5 Ibid s 48. As to the application of money found on the defendant to payment of a sum adjudged to be paid see PARAS 834, 859 post.

6 *R v D'Eyncourt* (1888) 21 QBD 109, DC. This power applies only to property taken from the accused at or after the time when he is charged with, or accused of some offence: *Arnell v Harris* [1945] KB 60, [1944] 2 All ER 522, DC.

## UPDATE

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(x) Powers on Judgment in Civil Proceedings/A. ORDERS FOR PERIODICAL PAYMENT/820. Means of payment.

## **(x) Powers on Judgment in Civil Proceedings**

### **A. ORDERS FOR PERIODICAL PAYMENT**

#### **820. Means of payment.**

In any case where a magistrates' court<sup>1</sup> orders money to be paid periodically by one person ('the debtor') to another ('the creditor')<sup>2</sup>, then:

- 347 (1) if the order is a qualifying maintenance order<sup>3</sup>, the court must at the same time exercise one of its powers<sup>4</sup>:
- 3
    5. (a) to order that payments under the order be made directly by the debtor to the creditor<sup>5</sup>;
    6. (b) to order that payments under the order be made to a justices' chief executive<sup>6</sup>;
    7. (c) to order that payments under the order be made by the debtor to the creditor by a specified method of payment<sup>7</sup>;
    8. (d) to order that payments under the order be made in accordance with arrangements made by the Secretary of State<sup>8</sup> for their collection<sup>9</sup>; or
    9. (e) to make an attachment of earnings order<sup>10</sup> to secure payments under the order<sup>11</sup>; and
  - 4
 

348 (2) if the order is not a maintenance order, the court must at the same time exercise one of its powers under heads (a) and (b) above<sup>12</sup>.

No order made by a magistrates' court under heads (a) to (e) above (other than one made under head (d) above) has effect at any time when the Secretary of State is arranging for the collection of payments under the qualifying maintenance order<sup>13</sup>. In deciding, in the case of a maintenance order, which of the powers under heads (a) to (e) above (other than under head (d) above) it is to exercise, the court having (if practicable) given them an opportunity to make representations must have regard to any representations made by the debtor, creditor and if the person who applied for the maintenance order is a person other than the creditor, by that other person<sup>14</sup>. Where the maintenance order is an order under Part I of the Domestic Proceedings and Magistrates' Courts Act 1978<sup>15</sup> or under, or having effect as if made under, provisions relating to financial provision for children<sup>16</sup>, and the court does not propose to exercise its power under head (c), head (d) or head (e) above, the court must, unless upon representations expressly made in that behalf by the person who applied for the maintenance order the court is satisfied that it is undesirable to do so<sup>17</sup>, order that payments under the order be made to a justices' chief executive<sup>18</sup>.

The Lord Chancellor may by regulations confer on magistrates' courts, in addition to their powers under heads (a) to (e) above, the power to order that payments under a qualifying maintenance order be made by the debtor to the creditor or a justices' chief executive (as the regulations may provide) by such method of payment as may be specified in the regulations<sup>19</sup>. Such regulations may make provision for any enactment<sup>20</sup> concerning, or connected with, payments under maintenance orders to apply, with or without modifications, in relation to the additional power<sup>21</sup>.

<sup>1</sup> For the meaning of 'magistrates' court' see PARA 583 ante.

2 As to the method of making periodical payments see the Magistrates' Courts Rules 1981, SI 1981/552, r 39 (substituted by SI 1992/457; and amended by SI 2001/610). As to the enforcement of periodical payments see PARA 829 et seq post.

3 For these purposes, a maintenance order is a 'qualifying maintenance order', if, at the time it is made, the debtor is ordinarily resident in England and Wales: Magistrates' Courts Act 1980 s 59(2) (s 59 substituted by the Maintenance Enforcement Act 1991 s 2). 'Maintenance order' means any order specified in the Administration of Justice Act 1970 Sch 8 (as amended) (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 642) and includes such an order which has been discharged, if any arrears are recoverable thereunder: Magistrates' Courts Act 1980 s 150(1) (definition added by the Family Law Reform Act 1987 s 33(1), (4), Sch 2 para 88, Sch 4). Reference to money paid periodically by one person to another include, in the case of a maintenance order, a reference to a lump sum paid by instalments by one person to another: Magistrates' Courts Act 1980 s 59(12) (a) (s 59(12) substituted by the Child Support Act 1991 (Consequential Amendments) Order 1994, SI 1994/731, art 3(1), (6)). As to the power to order payment by instalments see the Magistrates' Courts Act 1980 s 75 (as amended); and PARAS 829, 853 post. For the meaning of 'England' see PARA 501 note 7 ante; and for the meaning of 'Wales' see PARA 501 note 7 ante. As to the enforcement of maintenance orders see PARA 829 et seq post.

An order that a lump sum required to be paid under a maintenance order be paid by instalments is treated, with minor modifications, as a maintenance order for the purposes of s 59 (as amended): see s 75(2A)-(2C) (added by the Maintenance Enforcement Act 1991 s 11(1), Sch 2 para 6); and PARA 836 post.

4 Magistrates' Courts Act 1980 s 59(1)(a) (as substituted: see note 3 supra). The text refers to powers under s 59(3) (as substituted and amended): see heads (a)-(e) in the text.

5 Ibid s 59(3)(a) (as substituted: see note 3 supra).

6 Ibid s 59(3)(b) (as substituted (see note 3 supra); and amended by the Access to Justice Act 1999 s 90(1), Sch 13 paras 95, 99(1), (2)). As to the justices' chief executive see PARA 624 et seq ante. As to the justices' chief executive as collecting officer see PARA 627 ante. As to the duty of the justices' chief executive to notify remarriage of person entitled to payments under a maintenance order see the Magistrates' Courts Rules 1981, SI 1981/552, r 45 (amended by SI 2001/610).

Under former statutory provisions the justices' clerk was the collecting officer of the magistrates' court (see the Justices of the Peace Act 1997 s 46 (repealed): see now the Justices of the Peace Act 1997 s 41A (as added); and PARA 627 ante), and when he received payment he was not acting as the justices' agent: see *O'Connor v Isaacs* [1956] 2 QB 288 at 351, [1956] 2 All ER 417 at 434, CA, per Singleton LJ. Payment to the clerk was equivalent to payment to the person entitled: *Fildes (formerly Simkin) v Simkin* [1960] P 70, [1959] 3 All ER 697, DC. The clerk was not permitted to withhold payments from the person entitled pending appeal: *Board v Board* (1981) 11 Fam Law 210, (1981) Times, 29 June, DC.

Where there is in force an order under the Magistrates' Courts Act 1980 s 59 (as substituted and amended) that maintenance payments are to be made to the justices' chief executive, that justices' chief executive may apply for an attachment of earnings order: see the Attachment of Earnings Act 1971 s 3(1)(c) (as amended); and PARA 839 post.

7 Magistrates' Courts Act 1980 s 59(3)(c) (as substituted: see note 3 supra). The methods of payment referred to in the text are: (1) payment by standing order (s 59(6)(a) (as so substituted)); or (2) payment by any other method which requires one person to give his authority for payments of a specific amount to be made from an account of his to an account of another's on specific dates during the period for which the authority is in force and without the need for any further authority from him (s 59(6)(b) (as so substituted)).

As to applications to the clerk of the court for the variation of a maintenance order requiring payments to be made by any method falling within the Magistrates' Courts Act 1980 s 59(6) (as substituted), to provide that such payments be made to the justices' chief executive for the court see s 60(4)-(11) (as amended); and PARA 823 post.

As to the court's power on complaint for arrears see s 93 (as amended); and PARA 831 post.

In any case where the court proposes to exercise its power under s 59(3)(c) (as substituted) and, having given the debtor an opportunity of opening an account from which payments under the order may be made in accordance with the method of payment proposed to be ordered, the court is satisfied that the debtor has failed, without reasonable excuse, to open such an account, the court in exercising its power under s 59(3)(c) (as substituted) may order that the debtor open such an account: s 59(4) (as so substituted).

8 As to the Secretary of State see PARA 530 note 8 ante.

9 Magistrates' Courts Act 1980 s 59(3)(cc) (added by the Child Support Act 1991 (Consequential Amendments) Order 1994, SI 1994/731, art 3(1), (2)). References to arrangements made by the Secretary of

State for the collection of payments are to arrangements made by him under the Child Support Act 1991 s 30 and regulations made under it: Magistrates' Courts Act 1980 s 59(12)(b) (as substituted: see note 3 supra).

10    Ie under the Attachment of Earnings Act 1971: see PARA 837 et seq post; and COURTS.

11    Magistrates' Courts Act 1980 s 59(3)(d) (as substituted: see note 3 supra). As to the power of the Lord Chancellor, by order, to provide that a magistrates' court may order interest to be paid on a sum due under certain maintenance orders see s 94A (as added and amended); and PARA 832 post. As to the remission of arrears see s 95 (as substituted and amended); and PARA 833 post. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

12    Ibid s 59(1)(b) (as substituted: see note 3 supra). As to enforcement proceedings by the justices' chief executive where orders for periodical payment are in arrear see s 59A (as added and amended); and PARA 821 post. As to the penalty for failure to comply with the manner of payment required by a maintenance order see s 59B (as added and amended); and PARA 822 post.

13    Ibid s 59(3A) (added by the Child Support Act 1991 (Consequential Amendments) Order 1994, SI 1994/731, art 3(1), (3)).

14    Magistrates' Courts Act 1980 s 59(5) (as substituted (see note 3 supra); and amended by the Child Support Act 1991 (Consequential Amendments) Order 1994, SI 1994/731, art 3(1), (4)).

15    Ie the Domestic Proceedings and Magistrates' Courts Act 1978 Pt I (ss 1-35) (as amended): see MATRIMONIAL AND CIVIL PARTNERSHIP LAW.

16    Ie under the Children Act 1989 s 15(1), Sch 1 (as amended): see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARAS 539-551.

17    Magistrates' Courts Act 1980 s 59(7) (as substituted (see note 3 supra); and amended by the Child Support Act 1991 (Consequential Amendments) Order 1994, SI 1994/731, art 3(1), (5)). As to the manner in which payments are to be made and received, and the justices' chief executive's general duties as collecting officer see PARA 627 ante.

Where the court makes an order for the payment of a periodical sum under the Domestic Proceedings and Magistrates' Courts Act 1978, there is substituted for the reference to 'the person who applied for the maintenance order', a reference to 'the person to whom the payments under the order fall to be made': see s 32(2) (as amended); and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 657.

18    Ie under the Magistrates' Courts Act 1980 s 59(3)(b) (as substituted and amended): see head (b) in the text.

19    Ibid s 59(8) (as substituted (see note 3 supra); and amended by the Access to Justice Act 1999 s 90, Sch 13 paras 95, 99(3); and the Transfer of Functions (Magistrates' Courts and Family Law) Order 1992, SI 1992/709, art 3(2), Sch 2).

The power of the Lord Chancellor to make regulations under the Magistrates' Courts Act 1980 s 59(8) (as substituted and amended) is exercisable by statutory instrument and any such statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament: s 59(11) (as so substituted; and amended by the Transfer of Functions (Magistrates' Courts and Family Law) Order 1992, SI 1992/709, art 3(2), Sch 2). At the date at which this volume states the law no such regulations had been made.

20    As to the meaning of 'enactment' see PARA 505 note 16 ante.

21    Magistrates' Courts Act 1980 s 59(10) (as substituted: see note 3 supra). Any reference in any enactment to s 59(3)(a)-(d) (as substituted and amended) (see heads (a)-(e) in the text) (but not a reference to any specific paragraph of s 59(3) (as substituted and amended)) is to be taken to include a reference to the additional power, and the reference in s 59(10) (as substituted) to the additional power is to be construed accordingly: s 59(9) (as so substituted).

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

## 820 Means of payment

TEXT AND NOTE 6--Reference to a justices' chief executive is now to the designated officer for the court or for any other magistrates' court: 1980 Act s 59(3)(b) (amended by the Courts Act 2003 Sch 8 para 208(2)).

NOTE 16--Or under the Civil Partnership Act 2004 Sch 6 (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW): 1980 Act s 59(7) (amended by the Civil Partnership Act 2004 Sch 27 para 64).

TEXT AND NOTE 19--Reference to a justices' chief executive is now to the designated officer for a magistrates' court: 1980 Act s 59(8) (amended by the 2003 Act Sch 8 para 208(3)).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(x) Powers on Judgment in Civil Proceedings/A. ORDERS FOR PERIODICAL PAYMENT/821. Proceedings by the justices' chief executive.

### 821. Proceedings by the justices' chief executive.

Where payments under a relevant UK order<sup>1</sup> are required to be made periodically<sup>2</sup>: (1) to or through a justices' chief executive<sup>3</sup>; or (2) by certain methods of payment<sup>4</sup>, and any sums payable under the order are in arrear, the relevant justices' chief executive<sup>5</sup> must, if the person for whose benefit the payments are required to be made so requests in writing<sup>6</sup>, and unless it appears to that justices' chief executive that it is unreasonable in the circumstances to do so, proceed in his own name for the recovery of those sums<sup>7</sup>.

Where payments under a relevant UK order are required to be made periodically to or through a justices' chief executive, the person for whose benefit the payments are required to be made may, at any time during the period in which the payments are required to be so made, give authority in writing to the relevant justices' chief executive for him to proceed<sup>8</sup>, unless it appears to him that it is unreasonable in the circumstances to do so, in his own name for the recovery of any sums payable to or through him under the order in question which, on or after the date of the giving of the authority, fall into arrear<sup>9</sup>.

In any case where: (a) authority<sup>10</sup> has been given to a justices' chief executive<sup>11</sup>; and (b) the person for whose benefit the payments are required to be made gives notice in writing to the justices' chief executive cancelling the authority<sup>12</sup>, the authority ceases to have effect and, accordingly, the justices' chief executive must not continue any proceedings already commenced by virtue of the authority<sup>13</sup>.

The person for whose benefit the payments are required to be made has the same liability for all the costs properly incurred in or about proceedings taken at his request<sup>14</sup> or by virtue of his authority<sup>15</sup> (including any costs incurred as a result of any proceedings commenced not being continued) as if the proceedings had been taken by him<sup>16</sup>.

1 'Relevant UK order' means:

81 (1) an order made by a magistrates' court, other than an order made by virtue of the Maintenance Orders (Reciprocal Enforcement) Act 1972 Pt II (ss 25-39) (as amended) (see CONFLICT OF LAWS vol 8(3) (Reissue) PARAS 323-334) (Magistrates' Courts Act 1980 s 59A(7)(a) (s 59A added by the Maintenance Enforcement Act 1991 s 3));

- 82 (2) an order made by the High Court or a county court (including an order deemed to be made by the High Court by virtue of the Maintenance Orders Act 1958 s 1(2) (as substituted) (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 664) and registered under Pt I (ss 1-5) (as amended) (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARAS 664-675) in a magistrates' court (Magistrates' Courts Act 1980 s 59A(7)(b) (as so added)); or
- 83 (3) an order made by a court in Scotland or Northern Ireland and registered under the Maintenance Orders Act 1950 Pt II (ss 16-25) (as amended) (see CONFLICT OF LAWS vol 8(3) (Reissue) PARAS 293-299) in a magistrates' court (Magistrates' Courts Act 1980 s 59A(7)(c) (as so added)).

For the meaning of 'United Kingdom' see PARA 528 note 3 ante. For the meaning of 'magistrates' court' see PARA 583 ante; for the meaning of 'High Court' see PARA 513 note 8 ante; and for the meaning of 'county court' see PARA 573 note 2 ante.

2 Any reference to payments required to be made periodically includes, in the case of a maintenance order, a reference to instalments required to be paid in respect of a lump sum payable by instalments: *ibid* s 59A(7) (as added: see note 1 *supra*). As to the meaning of 'maintenance order' see PARA 820 note 3 ante. As to the power to order payment by instalments see s 75 (as amended); and PARAS 829, 853 post. As to the enforcement of periodical payments see PARA 829 *et seq* post; and as to the enforcement of maintenance orders see PARA 829 *et seq* post.

3 *Ibid* s 59A(1)(a) (as added (see note 1 *supra*); and amended by the Access to Justice Act 1999 s 90, Sch 13 paras 95, 100(1), (2)(a)). As to the justices' chief executive see PARA 624 *et seq* ante.

4 Magistrates' Courts Act 1980 s 59A(1)(b) (as added: see note 1 *supra*). The text refers to methods of payment falling within s 59(6) (as substituted): see PARA 820 ante.

5 'The relevant justices' chief executive', in relation to an order, means:

- 84 (1) in a case where payments under the order are required to be made to or through a justices' chief executive, that justices' chief executive (*ibid* s 59A(7)(a) ((s 59A as added: see note 1 *supra*); definition added by the Access to Justice Act 1999 Sch 13 paras 95, 100(1), (6)));
- 85 (2) in a case where such payments are required to be made by any method of payment falling within the Magistrates' Courts Act 1980 s 59(6) (as substituted) (see PARA 820 ante) and the order was made by a magistrates' court, the justices' chief executive for that magistrates' court (s 59A(7)(b) (as so added)); and
- 86 (3) in a case where such payments are required to be made by any method of payment falling within s 59(6) (as substituted) (see PARA 820 ante) and the order was not made by a magistrates' court, the justices' chief executive for the magistrates' court in which the order is registered (s 59A(7)(c) (as so added)).

6 As to the meaning of 'writing' see PARA 507 note 12 ante.

7 Magistrates' Courts Act 1980 s 59A(1) (as added (see note 1 *supra*); and amended by the Access to Justice Act 1999 Sch 13 paras 95, 100(1), (2)). Nothing in the Magistrates' Courts Act 1980 s 59A(1) (as added and amended) may affect any right of a person to proceed in his own name for the recovery of sums payable on his behalf under an order of any court: see s 59A(6) (as so added). For provisions as to payments required to be made to a child see s 62 (as amended); and PARA 825 post.

As to the duty of justices' chief executive to notify arrears of periodical payments see the Magistrates' Courts Rules 1981, SI 1981/552, r 40 (amended by SI 2001/610).

8 Magistrates' Courts Act 1980 s 59A(2) (as added (see note 1 *supra*); and amended by the Access to Justice Act 1999 Sch 13 paras 95, 100(1), (3)).

9 Magistrates' Courts Act 1980 s 59A(3) (as added (see note 1 *supra*); and amended by the Access to Justice Act 1999 Sch 13 paras 95, 100(1), (4)). Nothing in the Magistrates' Courts Act 1980 s 59A(3) (as added and amended) may affect any right of a person to proceed in his own name for the recovery of sums payable on his behalf under an order of any court: see s 59A(6) (as so added).

10 *Ie* under *ibid* s 59A(2) (as added and amended): see the text to note 8 *supra*.

11 *Ibid* s 59A(4)(a) (as added (see note 1 *supra*); and amended by the Access to Justice Act 1999 Sch 13 paras 95, 100(1), (5)(a)).

12 Magistrates' Courts Act 1980 s 59A(4)(b) (as added (see note 1 supra); and amended by the Access to Justice Act 1999 Sch 13 paras 95, 100(1), (5)(b)).

13 Magistrates' Courts Act 1980 s 59A(4) (as added (see note 1 supra); and amended by the Access to Justice Act 1999 Sch 13 paras 95, 100(1), (5)(c)).

14 *le* under the Magistrates' Courts Act 1980 s 59A(1) (as added and amended): see the text and notes 1-7 *supra*.

15 *le* under *ibid* s 59A(3) (as added and amended): see the text to note 9 *supra*.

16 *Ibid* s 59A(5) (as added: see note 1 *supra*).

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 821 Proceedings by the [designated officer]

TEXT AND NOTES--References to justices' chief executive are now to the designated officer for a magistrates' court: 1980 Act s 59A (amended by the Courts Act 2003 Sch 8 para 209).

NOTE 7--SI 1981/552 r 40 revoked: SI 2003/1236.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(x) Powers on Judgment in Civil Proceedings/A. ORDERS FOR PERIODICAL PAYMENT/822. Penalty for breach.

### 822. Penalty for breach.

In any case where: (1) payments under a relevant English maintenance order<sup>1</sup> are required to be made periodically<sup>2</sup>; and (2) the debtor<sup>3</sup> fails<sup>4</sup>, to comply with the order in so far as the order relates to the manner of payment concerned<sup>5</sup>, the person for whose benefit the payments are required to be made may make a complaint<sup>6</sup> to a relevant justice<sup>7</sup> giving details of the failure to comply<sup>8</sup>.

If the relevant justice is satisfied that the nature of the alleged failure to comply may be such as to justify the relevant court in exercising its power to order the debtor to pay a sum of money<sup>9</sup>, he must issue a summons directed to the debtor requiring him to appear before the relevant court to answer the complaint<sup>10</sup>. On the hearing of the complaint, the relevant court may order the debtor to pay a sum of money<sup>11</sup>. Any sum ordered to be so paid is for the purposes of the Magistrates' Courts Act 1980 to be treated as adjudged to be paid by a conviction of a magistrates' court<sup>12</sup>.

1 'Relevant English maintenance order' means:

87 (1) a maintenance order made by a magistrates' court, other than an order made by virtue of the Maintenance Orders (Reciprocal Enforcement) Act 1972 Pt II (ss 25-39) (as amended) (see CONFLICT OF LAWS vol 8(3) (Reissue) PARAS 323-334) (Magistrates' Courts Act 1980 s 59B(5)(a) (s 59B added by the Maintenance Enforcement Act 1991 s 3)); or

- 88 (2) an order made by the High Court or a county court (other than an order deemed to be made by the High Court by virtue of the Maintenance Orders Act 1958 s 1(2) (as substituted) (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 666)) and registered under Pt I (ss 1-5) (as amended) (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARAS 664-675) in a magistrates' court (Magistrates' Courts Act 1980 s 59B(5)(b) (as so added)).

As to the meaning of 'maintenance order' see PARA 820 note 3 ante. For the meaning of 'magistrates' court' see PARA 583 ante; for the meaning of 'High Court' see PARA 513 note 8 ante; and for the meaning of 'county court' see PARA 573 note 2 ante. As to the enforcement of maintenance orders see PARA 829 et seq post.

2 Ibid s 59B(1)(a) (as added: see note 1 supra). Payments are required to be made in the manner mentioned in s 59A(1)(a) (as added and amended) or s 59A(1)(b) (as added): see PARA 821 ante. Any reference to payments required to be made periodically includes a reference to instalments required to be paid in respect of a lump sum payable by instalments: s 59B(5) (as so added). As to the power to order payment by instalments see s 75 (as amended); and PARAS 829, 853 post. As to the enforcement of periodical payments see PARA 829 et seq post.

3 For the meaning of 'debtor' see PARA 837 note 2 post; definition applied by ibid s 59B(5) (as added: see note 1 supra).

4 Ie on or after 1 April 1992 (ie the date on which ibid s 59B came into force: Maintenance Enforcement Act 1991 (Commencement No 2) Order 1992, SI 1992/455).

5 Magistrates' Courts Act 1980 s 59B(1)(b) (as added: see note 1 supra).

6 As to the hearing of complaints see PARA 681 et seq ante.

7 'Relevant justice', in relation to a relevant court, means a justice of the peace for the petty sessions area for which the relevant court is acting: Magistrates' Courts Act 1980 s 59B(5) (as added: see note 1 supra). As to petty sessions see PARA 591 et seq ante.

8 Ibid s 59B(1) (as added: see note 1 supra). An order that a lump sum required to be paid under a maintenance order be paid by instalments is treated, with minor modifications, as a maintenance order for the purposes of s 59B (as added): see s 75(2A)-(2C) (added by the Maintenance Enforcement Act 1991 s 11(1), Sch 2 para 6); and PARA 836 post.

9 Ie under the Magistrates' Courts Act 1980 s 59B(3) (as added): see the text and note 11 infra.

10 Ibid s 59B(2) (as added: see note 1 supra).

11 Ibid s 59B(3) (as added: see note 1 supra). The sum must not exceed £1000: s 59B(3) (as so added). If it appears to the Secretary of State that there has been a change in the value of money since the relevant date, he may by order substitute for the sum for the time being specified in s 59B(3) (as added) such other sum or sums as appear to him justified by the change: s 143(1) (substituted by the Criminal Justice Act 1982 s 48(1)(a)), Magistrates' Courts Act 1980 s 143(2)(dd) (added by the Maintenance Enforcement Act 1991 s 11(1), Sch 2 para 9). As to the Secretary of State see PARA 530 note 8 ante. For the meaning of 'relevant date' see PARA 656 note 3 ante. As to the making of orders under the Magistrates' Courts Act 1980 s 143(1) (as substituted) see PARA 656 note 3 ante. At the date at which this volume states the law no such orders had been made.

12 Ibid s 59B(4) (as added: see note 1 supra). As to the use of the term 'a sum adjudged to be paid by conviction or order of a magistrates' court' see PARA 675 note 23 ante.

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(x) Powers on Judgment in Civil Proceedings/A. ORDERS FOR PERIODICAL PAYMENT/823. Revocation, revival and variation.



### 823. Revocation, revival and variation.

Where a magistrates' court<sup>1</sup> has made an order for money to be paid periodically<sup>2</sup> by one person to another, the court may, by order on complaint<sup>3</sup>, revoke, revive or vary the order<sup>4</sup>. The power to vary an order includes power to suspend the operation of any provision of the order temporarily and to revive the operation of any provision so suspended<sup>5</sup>. Where the order is a maintenance order, the power to vary the order includes power, if the court is satisfied that payment has not been made in accordance with the order, to exercise one of its powers in relation to the means of payment<sup>6</sup>.

In any case where: (1) a magistrates' court has made a maintenance order<sup>7</sup>; and (2) payments under the order are required to be made by certain methods of payment<sup>8</sup>, an interested party<sup>9</sup> may apply in writing<sup>10</sup> to the clerk of the court for the order to be varied<sup>11</sup>. Where such an application has been made, the clerk, after giving written notice (by post or otherwise) of the application to any other interested party and allowing that party, within the period of 14 days beginning with the date of the giving of that notice, an opportunity to make written representations, may vary the order to provide that payments under the order be made to the justices' chief executive<sup>12</sup> for the court<sup>13</sup>. Where such an application has been made, the clerk may, if he considers it inappropriate to exercise this power<sup>14</sup>, refer the matter to the court which may vary the order by exercising one of its powers in relation to the means of payment<sup>15</sup>.

On the hearing of a complaint for the enforcement, revocation, revival, variation or discharge of a magistrates' court maintenance order<sup>16</sup>, the court may remit the whole or any part of the sum due under the order<sup>17</sup>.

Where a complaint is made for an order for the periodical payment of money, or for the revocation, revival or variation of such an order, or for its enforcement, the court may, whatever adjudication it makes, order either party to pay the whole or any part of the other's costs<sup>18</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 The reference to money paid periodically by one person to another includes, in the case of a maintenance order, a reference to a lump sum paid by instalments by one person to another: Magistrates' Courts Act 1980 s 60(11)(b) (s 60 substituted by the Maintenance Enforcement Act 1991 s 4). As to the meaning of 'maintenance order' see PARA 820 note 3 ante. As to the power to order payment by instalments see the Magistrates' Courts Act 1980 s 75 (as amended); and PARAS 829, 853 post. As to the enforcement of periodical payments see PARA 829 et seq post; and as to the enforcement of maintenance orders see PARA 829 et seq post.

3 As to the hearing of complaints see PARA 681 et seq ante.

4 Magistrates' Courts Act 1980 s 60(1) (as substituted: see note 2 supra). As to the revocation and variation etc of orders for periodical payments see the Magistrates' Courts Rules 1981, SI 1981/552, r 41 (amended by SI 1989/384; and SI 2001/610), and the Magistrates' Courts Rules 1981, SI 1981/552, r 43 (amended by SI 1989/384).

The powers of a magistrates' court to revoke, revive or vary an order for the periodical payment of money and the power of the clerk of a magistrates' court to vary such an order under the Magistrates' Courts Act 1980 s 60 (as substituted) do not apply in relation to an order made under the Domestic Proceedings and Magistrates' Courts Act 1978 Pt I (ss 1-35) (as amended) (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 553 et seq), or under the Children Act 1989 Sch 1 (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARAS 539-551): Domestic Proceedings and Magistrates' Courts Act 1978 s 23(2) (amended by the Magistrates' Courts Act 1980 s 154, Sch 7 para 161; and the Maintenance Enforcement Act 1991 s 11(1), Sch 2 para 2); Children Act 1989 s 15(2) (amended by the Maintenance Enforcement Act 1991 Sch 2 para 10). As to justices clerks see PARA 631 et seq ante.

Appeal against the revival of a maintenance order is by appeal to the Family Division, not by case stated: see *Dodd v Dodd* [1920] 1 KB 71, DC.

As to a separate power to vary, revive and revoke orders of periodical payments see the Domestic Proceedings and Magistrates' Courts Act 1978 s 20(1) (as amended); and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARAS 576-577. As to the effect of discharge in bankruptcy on a bankruptcy debt which arises under any order

made in proceedings under the Magistrates' Courts Act 1980 s 60 (as substituted and amended) see the Insolvency Act 1986 s 281(5)(b), (8) (as amended); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

An order that a lump sum required to be paid under a maintenance order be paid by instalments is treated, with minor modifications, as a maintenance order for the purposes of the Magistrates' Courts Act 1980 s 60 (as substituted and amended): see s 75(2A)-(2C) (added by the Maintenance Enforcement Act 1991 s 11(1), Sch 2 para 6); and PARA 836 post.

5 Magistrates' Courts Act 1980 s 60(2) (as substituted: see note 2 supra).

6 Ibid s 60(3) (as substituted: see note 2 supra). The text refers to the courts' powers under s 59(3)(a)-(d) (as substituted and amended): see PARA 820 ante.

The provisions of s 59(4), (5), (7) (as substituted and amended) (see PARA 820 ante) apply for the purposes of s 60(3) (as substituted) as they apply for the purposes of s 59 (as substituted and amended): s 60(9) (as so substituted).

None of the powers of the court, or of the clerk of the court, conferred by s 60(3)-(9) (as substituted and amended) are exercisable in relation to a maintenance order which is not a qualifying maintenance order: s 60(10) (as so substituted). For the meaning of 'qualifying maintenance order' see PARA 820 note 3 ante; definition applied by virtue of s 60(10) (as substituted).

7 Ibid s 60(4)(a) (as substituted: see note 2 supra). See note 6 supra.

8 Ibid s 60(4)(b) (as substituted: see note 2 supra). The methods of payment referred to in the text are those falling within s 59(6) (as substituted): see PARA 820 ante.

9 For the purposes of ibid s 60(4)-(6) (as substituted and amended) 'interested party', in relation to a maintenance order, means: (1) the debtor (s 60(7)(a) (as substituted: see note 2 supra)); (2) the creditor (s 60(7)(b) (as so substituted)); and (3) if the person who applied for the maintenance order is a person other than the creditor, that other person (s 60(7)(c) (as so substituted)). See note 6 supra.

For the meaning of 'debtor' see PARA 820 ante; definition applied by s 60(11)(a) (as so substituted). For the meaning of 'creditor' see PARA 820 ante; definition applied by s 60(11)(a) (as so substituted).

10 As to the meaning of 'writing' see PARA 507 note 12 ante.

11 Magistrates' Courts Act 1980 s 60(4) (as substituted: see note 2 supra). The text refers to the order being varied as mentioned in s 60(5) (as substituted and amended): see the text and notes 12-13 infra.

12 As to the justices' chief executive see PARA 624 et seq ante.

13 Magistrates' Courts Act 1980 s 60(5) (as substituted (see note 2 supra); and amended by the Access to Justice Act 1999 s 90, Sch 13 paras 95, 101). The clerk may proceed with an application under the Magistrates' Courts Act 1980 s 60(4) (as substituted) notwithstanding that any such interested party as is referred to in s 60(5) (as substituted and amended) has not received written notice of the application: s 60(6) (as so substituted). See note 6 supra.

14 Ie under ibid s 60(5) (as substituted and amended): see the text and notes 12-13 supra.

15 Ibid s 60(8) (as substituted: see note 2 supra). The text refers to the courts' powers under s 59(3)(a)-(d) (as substituted and amended): see PARA 820 ante.

The provisions of s 59(4), (5), (7) (as substituted and amended) (see PARA 820 ante) apply for the purposes of s 60(8) (as substituted) as they apply for the purposes of s 59 (as substituted and amended): s 60(9) (as so substituted). See note 6 supra.

16 'Magistrates' court maintenance order' means a maintenance order enforceable by a magistrates' court: ibid s 150(1) (definition added by the Family Law Reform Act 1987 s 33(1), (4), Sch 2 para 88, Sch 4).

17 See the Magistrates' Courts Act 1980 s 95(1) (as substituted); and PARA 833 post. The court may not remit sums already paid: *Fildes (formerly Simkin) v Simkin* [1960] P 70, [1959] 3 All ER 697, DC.

Before remitting the whole or any part of a sum due under a magistrates' court maintenance order or an order enforceable as a magistrates' court maintenance order under the Magistrates' Courts Act 1980 s 95 (as substituted and amended), the court must, except save where it appears to it to be unnecessary or impracticable to do so, cause the person in whose favour the order is made or, if that person is a child, the child or the person with whom the child has his home to be notified of its intention and must give to such person a reasonable opportunity to make representations to the court, either orally at an adjourned hearing of the complaint for enforcement or in writing and such representations must be considered by the court: Magistrates' Courts Rules 1981, SI 1981/552, r 44(1) (amended by SI 1989/384). Any written representations may be

considered by the court if they purport to be signed by or on behalf of the person in whose favour the order is made or, if that person is a child, by or on behalf of the child or the person with whom the child has his home: Magistrates' Courts Rules 1981, SI 1981/552, r 44(2).

A person must be notified of the court's intention to remit arrears notwithstanding a notice of enforcement permission stating the power of the justices to remit arrears signed by that person: *R v Bristol Justices, ex p Hodge* [1997] QB 974, [1996] 4 All ER 924. The remedy for a breach of the requirement for notification is normally by case stated, although an application for judicial review may be made: *R v Bristol Justices, ex p Hodge* supra. See also *A v A (Remission of Arrears: Procedure)* [1996] 1 FCR 629; and *R v Dover Magistrates' Court, ex p Kidner* [1983] 1 All ER 475, (1982) 147 JP 254.

As to the manner of payment of arrears see the Magistrates' Courts Act 1980 s 95(2)-(7) (as substituted and amended); and PARA 833 post. As to the payment of interest on arrears due under certain maintenance orders see s 94A (as added and amended); and PARA 832 post.

18 See *ibid* s 64(1); and PARA 769 ante. See also PARA 829 et seq post. As to costs see PARA 767 et seq ante.

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 823 Revocation, revival and variation

TEXT AND NOTE 11--Words 'the clerk of' omitted: 1980 Act s 60(4) (amended by the Courts Act 2003 Sch 8 para 211(2), Sch 10).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(x) Powers on Judgment in Civil Proceedings/A. ORDERS FOR PERIODICAL PAYMENT/824. Periodical payments payable by one person under more than one order.

### 824. Periodical payments payable by one person under more than one order.

The power to make rules under the Magistrates' Courts Act 1980<sup>1</sup> includes power to make provision: (1) for enabling a person to make one complaint<sup>2</sup> for the recovery of payments required to be made to him by another person under more than one periodical payments order<sup>3</sup>; and (2) for apportioning between two or more periodical payments orders, in such manner as may be prescribed<sup>4</sup> by the rules, any sum paid to a justices' chief executive<sup>5</sup> on any date by the person liable to make payments under the orders which is less than the total sum required to be paid on that date to that justices' chief executive by that person in respect of those orders (being orders one of which requires payments to be made for the benefit of a child to the person with whom the child has his home and one or more of which requires payments to be made to that person either for his own benefit or for the benefit of another child who has his home with him)<sup>6</sup>.

1 *Ie* under the Magistrates' Courts Act 1980 s 144 (as amended): see PARA 588 ante.

2 As to the hearing of complaints see PARA 681 et seq ante.

3 Magistrates' Courts Act 1980 s 61(1)(a). 'Periodical payments order' means an order made by a magistrates' court, or registered in a magistrates' court under the Maintenance Orders Act 1950 Pt II (ss 16-25) (as amended) (see CONFLICT OF LAWS vol 8(3) (Reissue) PARAS 293-299) or the Maintenance Orders Act 1958 Pt I (ss 1-5) (as amended) (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARAS 664-675), which requires

the making of periodical payments: Magistrates' Courts Act 1980 s 61(2). For the meaning of 'magistrates' court' see PARA 583 ante. Any payments required under a periodical payments order to be made to a child are to be treated as if they were required to be made to the person with whom the child has his home: s 61(2). 'Child' means a person who has not attained the age of 18: s 61(2). As to the determination of the age of a person see PARA 738 ante. As to the enforcement of periodical payments see PARA 829 et seq post.

4 le prescribed by rules made under ibid s 144 (as amended) (see PARA 588 ante): s 150(1).

5 As to the justices' chief executive see PARA 624 et seq ante.

6 Magistrates' Courts Act 1980 s 61(1)(b) (amended by the Access to Justice Act 1999 s 90, Sch 13 paras 95, 102).

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 824 Periodical payments payable by one person under more than one order

TEXT AND NOTE 1--For 'The power ... power to' read 'Rules of court may': Magistrates' Courts Act 1980 s 61(1)(a) (amended by the Courts Act 2003 Sch 8 para 212(1)).

TEXT AND NOTES 5, 6--References to justices' chief executive are now to designated officer: 1980 Act s 61(1)(b) (amended by the 2003 Act Sch 8 para 212(2)).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(x) Powers on Judgment in Civil Proceedings/A. ORDERS FOR PERIODICAL PAYMENT/825. Periodical payments to children.

### 825. Periodical payments to children.

Where (1) periodical payments are required to be made, or a lump sum is required to be paid, to a child<sup>1</sup> under an order made by a magistrates' court<sup>2</sup>; or (2) periodical payments are required to be made to a child under an order which is registered<sup>3</sup> in a magistrates' court<sup>4</sup>, any sum required under the order to be paid to the child may be paid to the person with whom the child has his home<sup>5</sup>, and that person<sup>6</sup>: (a) may proceed in his own name for the variation, revival or revocation of the order<sup>7</sup>; and (b) may either proceed in his own name for the recovery of any sum required to be paid under the order or request or authorise the justices' chief executive<sup>8</sup> for the magistrates' court<sup>9</sup> to proceed for the recovery of that sum<sup>10</sup>.

Where a child has a right under any enactment<sup>11</sup> to apply for the revival of an order made by a magistrates' court which provided for the making of periodical payments to or for the benefit of the child, the person with whom the child has his home may proceed in his own name for the revival of that order<sup>12</sup>. Where any person by whom periodical payments are required to be paid to a child under an order made by or registered in a magistrates' court makes a complaint for the variation or revocation of that order, the person with whom the child has his home may answer the complaint in his own name<sup>13</sup>.

1 'Child' means a person who has not attained the age of 18: Magistrates' Courts Act 1980 s 62(7). As to the determination of the age of a person see PARA 738 ante.

2 Ibid s 62(1)(a). For the meaning of 'magistrates' court' see PARA 583 ante. As to the enforcement of periodical payments see PARA 829 et seq post.

3 Any reference to an order registered in a magistrates' court is a reference to an order registered in a magistrates' court under the Maintenance Orders Act 1950 Pt II (ss 16-25) (as amended) (see CONFLICT OF LAWS vol 8(3) (Reissue) PARAS 293-299) or the Maintenance Orders Act 1958 Pt I (ss 1-5) (as amended) (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARAS 664-675); Magistrates' Courts Act 1980 s 62(6).

4 Ibid s 62(1)(b). Orders should not be made for payment direct where such orders would be of no benefit to the parties or where the parties would derive no immediate tax advantage: *Practice Direction* [1980] 1 All ER 1007, [1980] 1 WLR 354.

5 References to the person with whom a child has his home: (1) in the case of any child who is being looked after by a local authority (within the meaning of the Children Act 1989 s 22 (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 867)), are references to that local authority (Magistrates' Courts Act 1980 s 62(5)(a) (substituted by the Children Act 1989 s 108(5), Sch 13 para 44(2)); and; (2) in any other case, are references to the person who, disregarding any absence of the child at a hospital or boarding school and any other temporary absence, has care of the child (Magistrates' Courts Act 1980 s 62(5)(b) (as so substituted)).

6 Ibid s 62(1).

7 Ibid s 62(1)(i). Section 62(1) (as amended) does not affect any right of a child to proceed in his own name for the variation, revival or revocation of an order or for the recovery of any sum payable thereunder: s 62(4).

8 As to the justices' chief executive see PARA 624 et seq ante.

9 le under the Magistrates' Courts Act 1980 s 59A(1) (as added and amended) or s 59A(2) (as added and amended): see PARA 821 ante.

10 Ibid s 62(1)(ii) (amended by the Maintenance Enforcement Act 1991 s 11(1), Sch 2 para 5; and the Access to Justice Act 1999 s 90, Sch 13 paras 95, 103). See note 7 supra.

11 As to the meaning of 'enactment' see PARA 505 note 16 ante.

12 Magistrates' Courts Act 1980 s 62(2). Section 62(2) (as amended) does not affect any right of a child to proceed in his own name for the variation, revival or revocation of an order or for the recovery of any sum payable thereunder: s 62(4).

13 Ibid s 62(3).

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 825 Periodical payments to children

TEXT AND NOTE 8--Reference to justices' chief executive is now to designated officer: Magistrates' Courts Act 1980 s 62(1)(ii) (amended by the Courts Act 2003 Sch 8 para 213).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(x) Powers on Judgment in Civil Proceedings/B. CIVIL DEBT/826. Money recoverable summarily as civil debt.

## B. CIVIL DEBT

## 826. Money recoverable summarily as civil debt.

Various statutes render sums of money recoverable as civil debts<sup>1</sup>. A magistrates' court<sup>2</sup> has power to make an order<sup>3</sup> on complaint<sup>4</sup> for the payment of any money recoverable summarily as a civil debt<sup>5</sup>. Any sum payment of which may be ordered by a magistrates' court is recoverable summarily as a civil debt except<sup>6</sup>: (1) a sum recoverable on complaint for a magistrates' court maintenance order<sup>7</sup>; or (2) a sum that may be adjudged to be paid by a summary conviction or by an order enforceable as if it were a summary conviction<sup>8</sup>.

Where a complaint is for an order for the payment of a sum recoverable summarily as a civil debt, the court may make the order with the consent of the defendant without hearing evidence<sup>9</sup>. On the hearing of a complaint, a magistrates' court has power in its discretion to make an order as to costs as it thinks just and reasonable<sup>10</sup>.

In any proceedings for the recovery or enforcement of a sum recoverable summarily as a civil debt the court has no power to issue a warrant for the arrest of a defendant who does not appear<sup>11</sup>.

1 See PARA 679 note 2 ante.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 For the form of order see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Form 106. See PARA 505 note 12 ante.

4 For the form of complaint see *ibid* Sch 2 Form 104. As to the hearing of complaints see PARA 681 et seq ante.

5 Magistrates' Courts Act 1980 s 58(1). For the form of summons see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, Sch 2 Form 105.

6 As to the enforcement of orders for the payment of civil debts see PARA 828 post.

7 Magistrates' Courts Act 1980 s 58(2)(a) (amended by the Family Law Reform Act 1987 s 33(1), Sch 2 para 80). For the meaning of 'magistrates' court maintenance order' see PARA 823 note 16 ante.

8 Magistrates' Courts Act 1980 s 58(2)(b). As to the use of the term 'a sum adjudged to be paid by conviction or order of a magistrates' court' see PARA 675 note 23 ante.

No fine or penalty for an offence, whether of a public or quasi-public character, can be recovered as a civil debt (*R v Paget* (1881) 8 QBD 151, DC), but the fact that a particular statute provides that a debt due may be recovered as if it was a penalty under that Act does not constitute the debt anything but a civil matter (*R v Gloucestershire Justices* (1869) LR 4 QB 285).

9 See the Magistrates' Courts Act 1980 s 53(3); and PARA 761 ante. As to the procedure at the hearing of a complaint generally see PARA 726 et seq ante.

10 See *ibid* s 64(1); and PARA 769 post. Costs ordered to be paid under s 64 (as amended) are enforceable as a civil debt: see s 64(3); and PARA 878 post.

11 See *ibid* s 55(8); and PARA 682 ante. However, this provision does not apply to a magistrates' court maintenance order: see s 93(3); and PARA 831 post.

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

## 826 Money recoverable summarily as civil debt

NOTES 3, 5--SI 1981/553 Sch 2 Forms 105, 106 revoked: SI 2003/1236.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(3) PENAL AND CIVIL POWERS/(x) Powers on Judgment in Civil Proceedings/C. ORDERS OTHER THAN FOR PAYMENT OF MONEY/827. Orders other than for payment of money.

### **C. ORDERS OTHER THAN FOR PAYMENT OF MONEY**

#### **827. Orders other than for payment of money.**

Where under any Act passed after 31 December 1879<sup>1</sup> a magistrates' court<sup>2</sup> has power to require the doing of anything other than the payment of money, or to prohibit the doing of anything, the court's order may contain such provisions for the manner in which anything is to be done, for the time during which anything is to be done or not to be done, and generally for giving effect to the order, as the court thinks fit<sup>3</sup>. The order may be suspended or rescinded by another order made on complaint<sup>4</sup>.

1    le the date on which the Summary Jurisdiction Act 1879 came into force.

2    For the meaning of 'magistrates' court' see PARA 583 ante.

3    Magistrates' Courts Act 1980 s 63(1). For a case where no mode of enforcing the order is prescribed by the statute see the Children and Young Persons Act 1933 s 26(2); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 779. As to the procedure for obtaining an order see generally para 681 et seq ante.

4    Magistrates' Courts Act 1980 s 63(2). The power of a magistrates' court to suspend or rescind certain orders under s 63(2) does not apply in relation to orders made under the Domestic Proceedings and Magistrates' Courts Act 1978 Pt I (1-35) (as amended) (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW): see s 23(2) (amended by the Magistrates' Courts Act 1980 s 154, Sch 7 para 161). This power also does not apply in relation to any order made under the Children Act 1989 (see CHILDREN AND YOUNG PERSONS): s 92(5). As to enforcement of orders other than for payment of money see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq.

### **UPDATE**

#### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(i) Payment Orders/A. CIVIL DEBT/828. Enforcement of civil debts.

### **(4) ENFORCEMENT OF SENTENCES AND ORDERS**

#### **(i) Payment Orders**

## **A. CIVIL DEBT**

### **828. Enforcement of civil debts.**

An order for the payment of a civil debt<sup>1</sup> may be enforced by the issue of a warrant of distress<sup>2</sup> for the purpose of levying the sum or by issue of a warrant committing<sup>3</sup> the defaulter to prison<sup>4</sup>. A warrant for distress must not be issued unless the defendant has been previously served with a copy of the minute of the order, or the order was made in his presence and the warrant is issued on that occasion<sup>5</sup>. A warrant for commitment may be issued in the case of an order to pay money although the defendant has not previously been served with a copy of the minute of the order<sup>6</sup>.

A magistrates' court<sup>7</sup> must not, however, commit any person to prison or other detention in default of payment of a sum enforceable as a civil debt<sup>8</sup> or for want of sufficient distress to satisfy such a sum except by an order made on complaint<sup>9</sup> and on proof to the satisfaction of the magistrates' court that the person has, or has had since the date on which the sum was adjudged to be paid, the means to pay the sum or any instalment of it on which he has defaulted, and refuses or neglects or, as the case may be, has refused or neglected to pay it<sup>10</sup>. In the case of such refusal or neglect, the magistrates' court may commit the debtor to prison<sup>11</sup> or other form of detention<sup>12</sup>, but before doing so a judgment summons must be issued on complaint and served on the judgment debtor<sup>13</sup>.

At the hearing of the judgment summons, any witness may be summoned to prove the means possessed by the judgment debtor in the same manner as witnesses are summoned to give evidence on the hearing of any other complaint<sup>14</sup>. All costs incurred by the complainant in proceedings for enforcement of the sum as the magistrates' court may direct must be included in the sum on payment of which the judgment debtor may be released from custody<sup>15</sup>.

1 As to money recoverable as a civil debt see PARA 826 ante.

2 As to warrants of distress see DISTRESS vol 13 (2007 Reissue) PARA 1134 et seq. As to the issue of warrants of distress see PARA 860 post.

3 As to warrants of commitment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1162. As to the issue of warrants of commitment see PARA 860 post.

4 See the Magistrates' Courts Act 1980 s 76(1). For the form of distress warrant see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Form 109 (amended by SI 2001/615).

5 See the Magistrates' Courts Rules 1981, SI 1981/552, r 53(1). See PARA 505 note 12 ante. A copy of the minute of the order is served by delivering it to the defendant or by sending it to him by post in a letter addressed to him at his last known or usual place of abode: r 53(3).

6 See *ibid* r 53(2).

7 For the meaning of 'magistrates' court' see PARA 583 ante.

8 'Sum enforceable as a civil debt' means any sum recoverable summarily as a civil debt which is adjudged to be paid by the order of a magistrates' court, or any other sum expressed by the Magistrates' Courts Act 1980 or any other Act to be so enforceable: s 150(1).

9 The summons issued on this complaint is a judgment summons: see the Magistrates' Courts Rules 1981, SI 1981/552, r 58; and the text and note 13 *infra*. For the form of complaint see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Form 107.

10 Magistrates' Courts Act 1980 s 96(1). A complaint under s 96(1) may be made at any time notwithstanding anything in the Magistrates' Courts Act 1980 or any other Act: s 96(2).



11 The maximum period of imprisonment is six weeks: see *ibid* s 76(3), Sch 4 para 3. For the form of commitment see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Form 110.

12 See the Magistrates' Courts Act 1980 ss 76(1), 96(1).

13 See the Magistrates' Courts Rules 1981, SI 1981/552, r 58(1). The summons must be served personally, but if a justice is satisfied by evidence on oath that prompt personal service is for any reason impracticable, he may allow the summons to be served in such a way as he thinks just: r 58(1). Unless the judgment debtor appears and consents to an immediate hearing, the magistrates' court must not hear the complaint unless the summons was served at least three clear days before the hearing: r 58(2).

General rules relating to the service of summonses (see PARA 690 ante) do not apply to a judgment summons: r 99(9). Service, when made out of the jurisdiction of the justice issuing it, may be proved by affidavit (r 58(3)), or by solemn declaration or certificate (see r 67(1), (2); and PARA 691 ante). As to service of judgment summonses see PARA 690 ante. As to service and non-appearance see PARA 693 ante.

For the form for judgment summons see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Form 108.

14 See the Magistrates' Courts Act 1980 s 97 (as amended); and PARA 734 ante. As to a statement of wages as evidence see PARA 864 post.

15 *Ibid* s 96(3).

## **UPDATE**

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### **828 Enforcement of civil debts**

NOTES 4, 11, 13--SI 1981/553 Sch 2 Forms 108-110 revoked: SI 2003/1236.

NOTE 5--SI 1981/552 r 53 replaced by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'), Pt 10.

NOTE 13--SI 1981/552 r 58(3) amended: SI 2005/617.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(i) Payment Orders/B. PERIODICAL PAYMENTS/829. Periodical payment orders enforceable as magistrates' courts maintenance orders.

## ***B. PERIODICAL PAYMENTS***

### **829. Periodical payment orders enforceable as magistrates' courts maintenance orders.**

Certain orders<sup>1</sup> which a magistrates' court may make for the periodical payment<sup>2</sup> of money by one person to another are enforceable as a magistrates' courts maintenance order<sup>3</sup>.

Where a sum is adjudged by a magistrates' court to be paid under a maintenance order, the court may, instead of requiring immediate payment, allow time for payment, or order payment by instalments<sup>4</sup>. Where a magistrates' court has allowed time for payment, the court may, on application by or on behalf of the person liable to make the payment, allow further time or order payment by instalments<sup>5</sup>. Where a magistrates' court has ordered payment by

instalments and default is made in the payment of any one instalment, proceedings may be taken as if the default had been made in the payment of all the instalments then unpaid<sup>6</sup>. Where default is made in paying a sum adjudged to be paid by a magistrates' court maintenance order, the magistrates' court may issue a warrant of distress<sup>7</sup> for the purpose of levying the sum or issue a warrant committing<sup>8</sup> the defaulter to prison<sup>9</sup>. Where proceedings are brought for the enforcement of a magistrates' court maintenance order, the magistrates' court may vary the order by exercising one of the following powers:

- 349 (1) the power to order that payments under the order be made directly by the debtor to the creditor<sup>10</sup>;
- 350 (2) the power to order that payments under the order be made to a justices' chief executive<sup>11</sup>;
- 351 (3) the power to order that payments under the order be made by the debtor to the creditor by such method of payment falling as may be specified<sup>12</sup>;
- 352 (4) the power to order that payments under the order be made in accordance with arrangements made by the Secretary of State<sup>13</sup> for their collection<sup>14</sup>;
- 353 (5) the power to make an attachment of earnings order under the Attachment of Earnings Act 1971<sup>15</sup> to secure payments under the order<sup>16</sup>.

Where a magistrates' court has ordered periodical payments to be made, and proceedings are taken before that or any other magistrates' court to enforce payment of that sum, then if the person to whom the sum is ordered to be paid is a justices' chief executive, a certificate purporting to be signed by the justices' chief executive that the sum has not been paid to him<sup>17</sup>, and in any other case a document purporting to be a statutory declaration by the person to whom the sum is ordered to be paid that the sum has not been paid to him, is admissible as evidence that the sum has not been paid to him<sup>18</sup>, unless the magistrates' court requires the justices' chief executive or other person to be called as a witness<sup>19</sup>. This applies similarly to orders that have been made in courts of equivalent jurisdiction in other parts of the United Kingdom and have been registered in a magistrates' court in England<sup>20</sup>.

On hearing a complaint for the enforcement of a maintenance order, a magistrates' court may remit the whole or any part of the sum due<sup>21</sup>.

1 Eg orders made under the Domestic Proceedings and Magistrates' Courts Act 1978 Pt I (ss 1-35) (as amended) (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW); orders registered and confirmed in a magistrates' court in England under the Maintenance Orders (Facilities for Enforcement) Act 1920 which are of such a nature that if made in that magistrates' court they would be enforceable as magistrates' courts maintenance orders (see s 6(2) proviso (prospectively repealed); and CONFLICT OF LAWS vol 8(3) (Reissue) PARA 309); certain maintenance orders registered in magistrates' courts in England under the Maintenance Orders Act 1950 Pt II (ss 16-25) (as amended) (see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 292 et seq), under the Maintenance Orders (Reciprocal Enforcement) Act 1972 (see CONFLICT OF LAWS vol 8(3) (Reissue) PARAS 310-334) or under the Civil Jurisdiction and Judgments Act 1982 (see CONFLICT OF LAWS); maintenance orders registered under the Maintenance Orders Act 1958 (see s 3(2) (as substituted); and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 665 et seq); and contribution orders made under the Children Act 1989 (see ss 15(1), 29, Sch 1 para 12(3), Sch 2 para 24(1); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 535 et seq). For the meaning of 'magistrates' court' see PARA 583 ante.

2 As to the power of magistrates' courts to order periodical payments see PARAS 820-825 ante. As to the enforcement of periodical payments where periodical payments are made under more than one order see the Magistrates' Courts Rules 1981, SI 1981/552, r 60 (amended by SI 1983/523; SI 2001/610).

3 For the meaning of 'magistrates' court maintenance order' see PARA 823 note 16 ante. As to the meaning of 'maintenance order' see PARA 820 note 3 ante. As to the enforcement of magistrates' court maintenance orders see further the Magistrates' Courts Rules 1981, SI 1981/552, r 59 (amended by SI 1989/384; and by SI 2001/610); and MATRIMONIAL AND CIVIL PARTNERSHIP LAW. As to the reciprocal enforcement of maintenance orders see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 292 et seq.

Where in proceedings to enforce a magistrates' court maintenance order, or an order enforceable as a magistrates' court maintenance order, the defendant is committed to custody, then on his discharge the

governor or keeper of the prison or place of detention must send to the justices' chief executive for the court that committed the defendant a certificate showing the dates of the defendant's reception and discharge, and that chief executive must, if the payments under the order are required to be made to the justices' chief executive for any other court, send the certificate to the last-mentioned justices' chief executive: Magistrates' Courts Rules 1981, SI 1981/552, r 63(1) (amended by SI 1989/384; and by SI 2001/610).

As to notice of adjudication on complaint for enforcement of magistrates' court maintenance orders see the Magistrates' Courts Rules 1981, SI 1981/552, r 61 (amended by SI 1989/384; and by SI 2001/610). As to proof that a magistrates' court maintenance order has not been revoked see the Magistrates' Courts Rules 1981, SI 1981/552, r 69 (amended by SI 1989/384; and by SI 2001/610).

4 See the Magistrates' Courts Act 1980 s 75(1).

5 Ibid s 75(2).

6 See ibid s 75(3).

7 As to warrants of distress see DISTRESS vol 13 (2007 Reissue) PARA 1134 et seq. As to the issue of warrants of distress see PARA 860 post.

8 As to warrants of commitment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1162. As to the issue of warrants of commitment see PARA 860 post.

9 Magistrates' Courts Act 1980 s 76(1) (amended by the Criminal Justice Act 1982 s 78, Sch 16) (which is expressed to be subject to the Magistrates' Courts Act 1980 Pt III (ss 76-96A) (as amended), and to s 132 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 31): s 76(1)).

10 Ibid s 59(3)(a) (s 59(3) substituted by the Maintenance Enforcement Act 1991 s 2); the Magistrates' Courts Act 1980 s 76(4) (s 76(4)-(6) added by the Maintenance Enforcement Act 1991 s 7). In respect of a magistrates' court maintenance order under the Magistrates' Courts Act 1980 s 76 (as amended), the provisions of s 59(4) (as substituted), s 59(5) (as substituted and amended) and s 59(7) (as substituted and amended) apply for the purposes of s 76(4) (as substituted) as they apply for the purposes of s 59 (as substituted and amended) (means of payment of periodical orders) (see PARA 820 ante): s 76(5) (as so substituted). However, s 59(4) (as substituted) and s 59(5) (as substituted and amended) do not have effect in relation to a maintenance order which is not a qualifying maintenance order within the meaning of s 59 (as substituted and amended) (see PARA 820 ante): s 76(6) (as so substituted).

11 Ibid s 59(3)(b) (as substituted (see note 10 supra); and amended by the Access to Justice Act 1999 s 90(1), Sch 13 paras 95, 99(1), (2)); Magistrates' Courts Act 1980 s 76(4) (as added: see note 10 supra). As to the justices' chief executive see PARA 624 et seq ante. See note 10 supra.

12 Ibid s 59(3)(c) (as substituted: see note 10 supra), s 76(4) (as added: see note 10 supra). See note 10 supra.

13 As to the Secretary of State see PARA 530 note 8 ante.

14 Magistrates' Courts Act 1980 s 59(3)(cc) (added by Child Support Act 1991 (Consequential Amendments) Order 1994, SI 1994/731, art 3(2)); Magistrates' Courts Act 1980 s 76(4) (as added: see note 10 supra). See note 10 supra.

15 As to attachment of earnings orders under the Attachment of Earnings Act 1971 see PARAS 837-847 post.

16 Magistrates' Courts Act 1980 s 59(3)(d) (as substituted: see note 10 supra), s 76(4) (as added: see note 10 supra). See note 10 supra.

17 Magistrates' Courts Act 1980 s 99(a) (amended by the Access to Justice Act 1999 s 90(1), Sch 13 paras 95, 112(a)).

18 Magistrates' Courts Act 1980 s 99(b).

19 Ibid s 99 (amended by the Access to Justice Act 1999 Sch 13 paras 95, 112(b)). For the forms of certificate and declaration see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Forms 146, 147.

20 See the Maintenance Orders Act 1950; the Maintenance Orders Act 1950 (Summary Jurisdiction) Rules 1950, SI 1950/2035; and CONFLICT OF LAWS vol 8(3) (Reissue) PARA 292 et seq.

21 See the Magistrates' Courts Act 1980 s 95(1) (substituted by the Maintenance Enforcement Act 1991 s 11(1), Sch 2 para 8); and PARA 833 post. See also *Pilcher v Pilcher (No 2)* [1956] 1 All ER 463, [1956] 1 WLR 298,

DC (where Lord Merriman P commended the practice of the Divorce Division not to enforce arrears which had accrued over a period of more than one year); *Ross v Pearson* [1976] 1 All ER 790, [1976] 1 WLR 224, DC; *Bernstein v O'Neill* [1989] FCR 79, [1989] 2 FLR 1; *C v S (Maintenance Orders: Enforcement)* [1997] 3 FCR 423, [1997] 1 FLR 298 (courts may enforce outstanding arrears accrued over a period of more than one year in exceptional circumstances). As to the discretion to remit arrears see *B v C (Enforcement: Arrears)* [1995] 2 FCR 678, [1995] 1 FLR 467 (proper approach is to decide how to exercise the discretion to enforce the arrears rather than how to exercise discretion to remit the arrears); *R v Halifax Justices, ex p Woolverton* [1981] 2 FLR 369 (remission of arrears is not to be employed as a penalty for not allowing access); *Parry v Meugens* (1985) 150 JP 152, [1986] 1 FLR 125 (arrears of monies owing to children not to be remitted as set off where husband cleared part of wife's debts).

Before making a remission, the magistrates' court must inform the person in whose favour the order is made, unless it is unnecessary or impractical to do so, of its intention, and must afford that person the opportunity of making representations to the court: see the Magistrates' Courts Rules 1981, SI 1981/552, r 44(1). Where there is a failure to give notice, the order to remit arrears may be quashed by judicial review: *R v Dover Magistrates' Court, ex p Kidner* [1983] 1 All ER 475, 147 JP 254. However, appeal by way of case stated should be the normal remedy: *R v Bristol Magistrates, ex p Hodge* [1997] QB 974, [1996] 4 All ER 924. The magistrates' court must indicate its intention to remit arrears: see *A v A (Remission of Arrears: Procedure)* [1996] 1 FCR 629. As to judicial review see PARA 884 post; and as to appeals by way of case stated see PARAS 885-896 post.

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 829 Periodical payment orders enforceable as magistrates' courts maintenance orders

TEXT AND NOTES--References to justices' chief executive are now to designated officer: Magistrates' Courts Act 1980 s 99 (amended by the Courts Act 2003 Sch 8 para 232).

NOTE 2--SI 1981/552 r 60 further amended: SI 2005/617.

NOTE 3--SI 1981/552 rr 59, 61, 63(1) further amended: SI 2005/617. SI 1981/552 r 69 further amended: SI 2005/617, SI 2005/2930.

NOTE 19--SI 1981/553 Sch 2 Forms 146, 147 revoked: SI 2003/1236.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(i) Payment Orders/B. PERIODICAL PAYMENTS/830. Registration of maintenance orders.

### 830. Registration of maintenance orders.

A person entitled to receive payments under maintenance orders<sup>1</sup> made by the High Court<sup>2</sup> or a county court<sup>3</sup> may apply for the registration of the order in a magistrates' court<sup>4</sup>. Once such an order is registered in the magistrates' court, it is enforceable by that court as if it were a magistrates' court maintenance order<sup>5</sup> and is no longer enforceable by the High Court or county court<sup>6</sup>.

1 As to the meaning of 'maintenance order' see PARA 820 note 3 ante.

2 For the meaning of 'High Court' see PARA 513 note 8 ante.

3 For the meaning of 'county court' see PARA 573 note 2 ante.

4 See the Maintenance Orders Act 1958; and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 666 et seq. For the meaning of 'magistrates' court' see PARA 583 ante.

5 For the meaning of 'magistrates' court maintenance order' see PARA 823 note 16 ante. As to the enforcement of magistrates' courts maintenance orders see PARA 829 ante.

6 See MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 668.

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(i) Payment Orders/B. PERIODICAL PAYMENTS/831. Complaint of arrears.

#### 831. Complaint of arrears.

Where default is made in paying a sum ordered to be paid by a magistrates' court maintenance order<sup>1</sup>, the magistrates' court must not enforce payment of the sum<sup>2</sup> except by an order made on complaint<sup>3</sup>.

A complaint of arrears must be made not earlier than the fifteenth day after the making of the order for the enforcement of which it is made<sup>4</sup>. Where at the time and place appointed for the hearing or adjourned hearing of a complaint of arrears the complainant appears but the defendant does not, the magistrates' court may proceed in his absence<sup>5</sup>. However, the magistrates' court must not begin to hear the complaint of arrears in the absence of the defendant unless either it is proved to the satisfaction of the court on oath<sup>6</sup>, or in such other manner as may be prescribed<sup>7</sup>, that the summons was served on him within what appears to the magistrates' court to be a reasonable time before the hearing or adjourned hearing or the defendant has appeared on a previous occasion to answer the complaint<sup>8</sup>.

A magistrates' court must not impose imprisonment<sup>9</sup> in respect of a default to which a complaint of arrears relates unless the magistrates' court has inquired in the presence of the defendant whether the default was due to the defendant's wilful refusal or culpable neglect, and must not impose imprisonment in respect of a default to which a complaint of arrears relates if it is of opinion that the default was not so due<sup>10</sup>. In any case<sup>11</sup>, a magistrates' court must not impose imprisonment in respect of a default to which the complaint of arrears relates:

- 354 (a) in the absence of the defendant<sup>12</sup>; or
- 355 (b) in a case where the magistrates' court has power to do so, if it is of the opinion that it is appropriate to make an attachment of earnings order<sup>13</sup> or to order that payments under the order be made by any method of payment<sup>14</sup> of periodical payments<sup>15</sup>; or
- 356 (c) where the sum to which the default relates comprises only interest which the defendant has been ordered<sup>16</sup> to pay<sup>17</sup>.

The period for which a defendant may be committed to prison under a warrant of commitment<sup>18</sup> issued<sup>19</sup> in pursuance of a complaint of arrears must not exceed six weeks<sup>20</sup>. The imprisonment or other detention of a defendant under a warrant of commitment does not operate to

discharge the defendant from his liability to pay the sum in respect of which the warrant was issued<sup>21</sup>.

Where a person is committed to custody<sup>22</sup> for failure to pay a sum due under a magistrates' court maintenance order, then, unless the magistrates' court that commits him otherwise directs, no arrears will accrue under the order while he is in custody<sup>23</sup>.

1 For the meaning of 'magistrates' court maintenance order' see PARA 823 note 16 ante. As to the meaning of 'maintenance order' see PARA 820 note 3 ante. For the meaning of 'magistrates' court' see PARA 583 ante. As to the enforcement of magistrates' courts maintenance orders see PARA 829 ante.

2 le under the Magistrates' Courts Act 1980 s 76 (as amended): see PARA 829 ante.

3 Ibid s 93(1) (amended by the Family Law Reform Act 1987 s 33(1), Sch 2 para 84).

4 Magistrates' Courts Act 1980 s 93(2). However, subject to s 93(2), such a complaint may be made at any time notwithstanding anything in the Magistrates' Courts Act 1980 or any other Act: s 93(2).

5 Ibid s 93(4). Section 55 (non-appearance of defendant) (see PARA 693 ante) does not apply in relation to complaints under s 93 (as amended): s 93(3). Where at the time and place appointed for the hearing or adjourned hearing of a complaint the defendant appears but the complainant does not, the magistrates' court may dismiss the complaint or proceed in the absence of the complainant: ss 56, 93(3).

6 If a complaint is substantiated on oath, any justice of the peace acting for the same petty sessions area as a court having jurisdiction to hear the complaint may issue a warrant for the defendant's arrest, whether or not a summons has been previously issued: ibid s 93(5). As to petty sessions see PARA 591 seq ante. As to warrants of arrest see PARA 695 et seq ante.

7 'Prescribed' means prescribed by the rules made under ibid s 144 (as amended) (see PARA 588 ante): s 150(1).

8 Ibid s 93(4).

9 For the meaning of 'impose imprisonment' see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 6.

10 Magistrates' Courts Act 1980 s 93(6).

11 le without prejudice to ibid s 93(6).

12 Magistrates' Courts Act 1980 s 93(6)(a) (s 93(6)(a), (b) substituted by the Maintenance Enforcement Act 1991 s 11(1), Sch 2 para 7).

13 As to attachment of earnings orders see PARA 837 et seq post.

14 le any method falling within the Magistrates' Courts Act 1980 s 59(6) (as substituted): see PARA 820 ante.

15 Ibid s 93(6)(b) (as substituted: see note 12 supra).

16 le by virtue of ibid s 94A(1) (as added and amended): see PARA 832 post.

17 Ibid s 93(6)(c) (added by the Maintenance Enforcement Act 1991 Sch 2 para 7).

18 As to warrants of commitment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1162.

19 As to the issue of warrants of commitment see PARA 860 post.

20 Magistrates' Courts Act 1980 s 93(7). Section 93(7) is expressed to be notwithstanding anything in s 76(3) (enforcement of sums adjudged to be paid) (see PARA 829 ante): s 93(7).

21 Ibid s 93(8).

22 le under ibid Pt III (ss 74-96A) (as amended).

23 Ibid s 94 (amended by the Family Law Reform Act 1987 Sch 2 para 85).

**UPDATE****772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(i) Payment Orders/B. PERIODICAL PAYMENTS/832. Interest on arrears.

**832. Interest on arrears.**

The Lord Chancellor<sup>1</sup> may by order<sup>2</sup> provide that a magistrates' court<sup>3</sup>, on the hearing of a complaint for the enforcement, revocation, revival, variation or discharge of an English maintenance order<sup>4</sup>, may order that interest of an amount calculated at the prescribed rate<sup>5</sup> is paid on so much of the sum due under the order as it may determine<sup>6</sup>.

Where a magistrates' court orders the payment of interest on any sum due under a maintenance order then if it orders that the whole or any part of the interest be paid by instalments that order is regarded as an instalments order<sup>7</sup> and the statutory provisions relating to the remission of arrears and the manner in which arrears are to be paid<sup>8</sup> apply accordingly in relation to it<sup>9</sup>, and the whole of the interest is enforceable as a sum adjudged to be paid by the maintenance order<sup>10</sup>.

1 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 An order under the Magistrates' Courts Act 1980 s 94A (as added and amended) (see the text and note infra) may make provision for the manner in which and the periods by reference to which interest are to be calculated: s 94A(3) (s 94A added by the Maintenance Enforcement Act 1991 s 8). The power of the Lord Chancellor to make an order under the Magistrates' Courts Act 1980 s 94A (as added and amended) is exercisable by statutory instrument made with the concurrence of the Treasury, and any such statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament: s 94A(6) (as so added; and amended by the Transfer of Functions (Magistrates' Courts and Family Law) Order 1992, SI 1992/709, art 3(2), Sch 2). At the date at which this volume states the law no orders had been made under the Magistrates' Courts Act 1980 s 94A (as added and amended).

3 For the meaning of 'magistrates' court' see PARA 583 ante.

4 For these purposes, 'English maintenance order' means: (1) a qualifying maintenance order made by a magistrates' court, other than an order made by virtue of the Maintenance Orders (Reciprocal Enforcement) Act 1972 Pt II (ss 25-39) (as amended) (see CONFLICT OF LAWS); or (2) an order made by the High Court or a county court (other than an order deemed to be made by the High Court by virtue of the Maintenance Orders Act 1958 s 1(2) (as substituted)) and registered under Pt I (ss 1-5) (as amended) (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 664) in a magistrates' court: Magistrates' Courts Act 1980 s 94A(5) (as added: see note 2 supra). For the meaning of 'qualifying maintenance order' see PARA 820 note 3 ante; definition applied by virtue of s 94A(5) (as added). For the meaning of 'High Court' see PARA 513 note 8 ante. For the meaning of 'county court' see PARA 573 note 2 ante.

5 For these purposes, 'the prescribed rate' means such rate of interest as the Lord Chancellor may by order prescribe: *ibid* s 94A(2) (as added (see note 2 supra); and amended by the Transfer of Functions (Magistrates' Courts and Family Law) Order 1992, SI 1992/709, Sch 2).

6 Magistrates' Courts Act 1980 s 94A(1) (as added (see note 2 supra); and amended by the Transfer of Functions (Magistrates' Courts and Family Law) Order 1992, SI 1992/709, Sch 2).

7 *Ie* for the purposes of the Magistrates' Courts Act 1980 s 95 (as substituted and amended): see PARA 833 post.

8 le ibid s 95 (as substituted and amended): see PARA 833 post.

9 Ibid s 94A(4)(a) (as added: see note 2 supra).

10 Ibid s 94A(4)(b) (as added: see note 2 supra).

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(i) Payment Orders/B. PERIODICAL PAYMENTS/833. Remission of arrears and manner in which arrears are to be paid.

#### 833. Remission of arrears and manner in which arrears are to be paid.

On the hearing of a complaint for the enforcement, revocation, revival, variation or discharge of a magistrates' court maintenance order<sup>1</sup>, a magistrates' court may remit the whole or any part of the sum due under the order<sup>2</sup>. If, on the hearing of such a complaint, a magistrates' court orders that the whole or any part of the sum due under the order be paid by instalments, then:

357 (1) if the maintenance order is an English maintenance order<sup>3</sup>, the magistrates' court must at the same time exercise one of the following in relation to the instalments order<sup>4</sup>:

5

10. (a) the power to order that payments under the order be made directly by the debtor to the creditor<sup>5</sup>;
11. (b) the power to order that payments under the order be made to a justices' chief executive<sup>6</sup>;
12. (c) the power to order that payments under the order be made by the debtor to the creditor by such method of payment<sup>7</sup> as may be specified<sup>8</sup>;
13. (d) the power to order that payments under the order be made in accordance with arrangements made by the Secretary of State<sup>9</sup> for their collection<sup>10</sup>;
14. (e) the power to make an attachment of earnings order under the Attachment of Earnings Act 1971<sup>11</sup> to secure payments under the order<sup>12</sup>;

6

358 (2) if the maintenance order is a non-English maintenance order<sup>13</sup>, the magistrates' court must at the same time exercise one of the following in relation to the instalments order<sup>14</sup>:

7

15. (a) the power to order that payments under the order be made directly to a justices' chief executive<sup>15</sup>;
16. (b) the power to order that payments under the order be made to a justices' chief executive by such method of payment<sup>16</sup> as may be specified<sup>17</sup>;
17. (c) the power to make an attachment of earnings order under the Attachment of Earnings Act 1971 to secure payments under the order<sup>18</sup>.

8



In deciding which of the powers described above are to be exercised, the magistrates' court must have regard to any representations made by the debtor<sup>19</sup>. The magistrates' court may in the course of any proceedings concerning an instalments order or the magistrates' court maintenance order to which it relates vary the instalments order by exercising, in respect of an English maintenance order, one of the powers referred to in head (1) above<sup>20</sup>, or, in respect of a non-English maintenance order, one of its powers under head (2) above<sup>21</sup>.

1 For the meaning of 'magistrates' court maintenance order' see PARA 823 note 16 ante. As to the meaning of 'maintenance order' see PARA 820 note 3 ante. For the meaning of 'magistrates' court' see PARA 583 ante. As to the enforcement of magistrates' courts maintenance orders see PARA 829 ante.

2 Magistrates' Courts Act 1980 s 95(1) (s 95 substituted by the Maintenance Enforcement Act 1991 s 11(1), Sch 2 para 8).

3 For the meaning of 'English maintenance order' see PARA 832 note 4 ante; definition applied by virtue of the Magistrates' Courts Act 1980 s 95(7).

4 Ibid s 95(2)(a) (as substituted: see note 2 supra). The provisions relating to the payment of periodical payment orders contained in s 59(4) (as substituted), s 59(5) (as substituted and amended) and s 59(7) (as substituted and amended) (see PARA 820 ante) apply for the purposes of s 95(2)(a) (as substituted): s 95(5) (as substituted: see note 2 supra).

5 Ibid s 59(3)(a) (s 59(3) substituted by the Maintenance Enforcement Act 1991 s 2); Magistrates' Courts Act 1980 s 95(2)(a) (as substituted: see note 2 supra). See note 4 supra.

6 Ibid s 59(3)(b) (as substituted (see note 5 supra); and amended by the Access to Justice Act 1999 s 90(1), Sch 13 paras 95, 99(1), (2)); Magistrates' Courts Act 1980 s 95(2)(a) (as substituted: see note 2 supra). See note 4 supra. As to the justices' chief executive see PARA 624 et seq ante.

7 Ie falling within ibid s 59(6) (as substituted): see PARA 820 ante.

8 Ibid s 59(3)(c) (as substituted: see note 5 supra), s 95(2)(a) (as substituted: see note 2 supra). See note 4 supra.

9 As to the Secretary of State see PARA 530 note 8 ante.

10 Magistrates' Courts Act 1980 s 59(3)(cc) (added by the Child Support Act 1991 (Consequential Amendments) Order 1994, SI 1994/731, art 3(2)); Magistrates' Courts Act 1980 s 95(2)(a) (as substituted: see note 2 supra). See note 4 supra.

11 As to attachment of earnings orders under the Attachment of Earnings Act 1971 see PARA 837 et seq post.

12 Magistrates' Courts Act 1980 s 59(3)(d) (as substituted: see note 5 supra), s 95(2)(a) (as substituted: see note 2 supra). See note 4 supra.

13 For these purposes, 'non-English maintenance order' means:

89 (1) a maintenance order registered in, or confirmed by, a magistrates' court: (a) under the Maintenance Orders (Facilities for Enforcement) Act 1920 (see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 292 et seq); (b) under the Maintenance Orders Act 1950 Pt II (ss 16-25) (as amended) (see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 292 et seq); (c) under the Maintenance Orders (Reciprocal Enforcement) Act 1972 Pt I (ss 1-24) (as amended) (see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 310 et seq); (d) under the Civil Jurisdiction and Judgments Act 1982 Pt I (ss 1-15) (as amended) (see CONFLICT OF LAWS); (e) under the EC Council Regulation 44/2001 (OJ L012, 16.01.2001, p 1) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Magistrates' Courts Act 1980 s 95(7)(a) (as substituted (see note 2 supra); and amended by the Civil Jurisdiction and Judgments Order 2001, SI 2001/3929, art 5, Sch 3 paras 10, 12(a), (b));

90 (2) an order deemed to be made by the High Court by virtue of the Maintenance Orders Act 1958 s 1(2) (as substituted) and registered under Pt I (ss 1-5) (as amended) (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 664) in a magistrates' court (Magistrates' Courts Act 1980 s 95(7)(b) (as so substituted)); or

- 91 (3) a maintenance order made by a magistrates' court by virtue of the Maintenance Orders (Reciprocal Enforcement) Act 1972 Pt II (ss 25-39) (as amended) (see CONFLICT OF LAWS) (Magistrates' Courts Act 1980 s 95(7)(c) (as so substituted)).
- 14 Ibid s 95(2)(b) (as substituted: see note 2 supra).
- 15 Ibid s 95(3)(a) (as substituted (see note 2 supra); and amended by the Access to Justice Act 1999 Sch 13 paras 95, 110).
- 16 Ie falling within the Magistrates' Courts Act 1980 s 59(6) (as substituted): see PARA 820 ante.
- 17 Ibid s 95(3)(b) (as substituted (see note 2 supra); and amended by the Access to Justice Act 1999 Sch 13 paras 95, 110). In any case where the magistrates' court proposes to exercise its power under the Magistrates' Courts Act 1980 s 95(3)(b) (as substituted), and having given the debtor an opportunity of opening an account from which payments under the order may be made in accordance with the method of payment proposed to be ordered under s 95(3)(b) (as substituted), the court is satisfied that the debtor has failed, without reasonable excuse, to open such an account, the magistrates' court in exercising its power under s 95(3)(b) (as substituted) may order that the debtor open such an account: ss 59(4) (as substituted: see note 2 supra), s 95(6)(a).
- 18 Ibid s 95(3)(c) (as substituted: see note 2 supra).
- 19 Ibid s 95(6)(b) (as substituted: see note 2 supra).
- 20 Ibid s 95(4)(a) (as substituted: see note 2 supra). The provisions relating to the payment of periodical payment orders contained in s 59(4) (as substituted), s 59(5) (as substituted and amended) and s 59(7) (as substituted and amended) (see PARA 820 ante) apply for the purposes of s 95(4)(a) (as substituted): s 95(5) (as substituted: see note 2 supra).
- 21 Ibid s 95(4)(b) (as substituted: see note 2 supra).

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 833 Remission of arrears and manner in which arrears are to be paid

TEXT AND NOTES 6-18--In heads (1)(b), (2)(a) and (b), references to a justices' chief executive are now to the designated officer for the court or for any other magistrates' court: 1980 Act ss 59(3)(b), 95(3) (amended by the Courts Act 2003 Sch 8 paras 208(2), 229).

NOTE 13--In head (1) after 'civil and commercial matters' add ', as applied by the Agreement made on 19 October 2005 between the European Community and the Kingdom of Denmark': 1980 Act s 95(7)(a) (further amended by the Civil Jurisdiction and Judgments Regulations 2007, SI 2007/1655).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(i) Payment Orders/B. PERIODICAL PAYMENTS/834. Money found on defaulter.

### 834. Money found on defaulter.

Where a magistrates' court<sup>1</sup> has ordered the enforcement of a sum due from a person under a magistrates' court maintenance order<sup>2</sup>, the court may order him to be searched<sup>3</sup>. Any money

found on the arrest of a person adjudged to pay such a sum, or on a search or on his being taken to a prison or other place of detention in default of payment of such a sum or for want of sufficient distress to satisfy such a sum, may, unless the magistrates' court otherwise directs, be applied towards payment of the sum<sup>4</sup>. The balance, if any, must be returned to him<sup>5</sup>. A magistrates' court must not allow the application of any money found on a person if it is satisfied that the money does not belong to him or that the loss of the money would be more injurious to his family than would be his detention<sup>6</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 For the meaning of 'magistrates' court maintenance order' see PARA 823 note 16 ante. As to the meaning of 'maintenance order' see PARA 820 note 3 ante. As to the enforcement of magistrates' courts maintenance orders see PARA 829 ante.

3 See the Magistrates' Courts Act 1980 s 80(1) (amended by the Family Law Reform Act 1987 s 33(1), Sch 2 para 83).

4 Magistrates' Courts Act 1980 s 80(2). Where the defaulter is committed to, or ordered to be detained in, a prison or other place of detention, any direction given under s 80(2) is indorsed on the warrant of commitment: Magistrates' Courts Rules 1981, SI 1981/552, r 64. As to warrants of commitment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1162.

5 Magistrates' Courts Act 1980 s 80(2).

6 Ibid s 80(3).

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(i) Payment Orders/B. PERIODICAL PAYMENTS/835. Orders enforceable as civil debts.

### 835. Orders enforceable as civil debts.

Orders for the periodical payment<sup>1</sup> of money other than those enforceable as a magistrates' court maintenance order<sup>2</sup> are directed to be enforceable in the same manner as an order for the payment of a civil debt recoverable summarily<sup>3</sup>.

1 As to the power of magistrates' courts to order periodical payments see PARAS 820-825 ante.

2 For the meaning of 'magistrates' court maintenance order' see PARA 823 note 16 ante. As to the meaning of 'maintenance order' see PARA 820 note 3 ante. For the meaning of 'magistrates' court' see PARA 583 ante. As to the enforcement of magistrates' courts maintenance orders see PARA 829 ante.

3 As to enforcement of civil debts see PARA 828 ante.

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(i) Payment Orders/C. LUMP SUMS/836. Orders for payment of lump sum.

### **C. LUMP SUMS**

#### **836. Orders for payment of lump sum.**

A magistrates' court<sup>1</sup> may make orders for the payment of lump sums in matrimonial proceedings<sup>2</sup> and proceedings in respect of children<sup>3</sup>. Any such orders made in matrimonial or children's proceedings will be enforceable in the same manner as a magistrates' court maintenance order<sup>4</sup>. An order that a lump sum required to be paid under a maintenance order be paid by instalments is treated, for certain purposes, as a periodical payment<sup>5</sup>.

On the hearing of a complaint for the enforcement of such an order the magistrates' court may remit the whole or any part of the sum due<sup>6</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 See under the Domestic Proceedings and Magistrates' Courts Act 1978 s 6(1), (2)(b) (as substituted): see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARAS 554-555.

3 See under the Children Act 1989 s 15(1), Sch 1 (both as amended): see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 554 et seq. A lump sum may also be registered for enforcement under the Civil Jurisdiction and Judgments Act 1982 where that lump sum relates to maintenance: see Case C-220/95 *Van den Boogaard v Laumen* [1997] QB 759, [1997] 3 FCR 493, ECJ.

4 See the Domestic Proceedings and Magistrates' Courts Act 1978 s 32(1) (amended by the Family Law Reform Act 1987 s 33(1), Sch 2 para 70); and the Children Act 1989 Sch 1 para 12(3). For the meaning of 'magistrates' court maintenance order' see PARA 823 note 16 ante; definition applied by virtue of the Domestic Proceedings and Magistrates' Courts Act 1978 s 88(1) (definition added by the Family Law Reform Act 1987 s 33(1), Sch 2 para 71). As to the enforcement of magistrates' courts maintenance orders see PARA 829 et seq ante. As to the entry of the particulars relating to the payment of a lump sum under a magistrates' court maintenance order into the register see the Magistrates' Courts Rules 1981, SI 1981/552, r 62 (amended by SI 1989/384). As to the duty to keep the register see PARA 628 ante.

5 See the Magistrates' Courts Act 1980 s 75(2A)-(2C) (added by the Maintenance Enforcement Act 1991 s 11(1), Sch 2 para 6); and PARAS 820, 822-823 ante.

6 See the Magistrates' Courts Act 1980 s 95(1) (substituted by the Maintenance Enforcement Act 1991 s 11(1), Sch 2 para 8); and PARA 833 ante.

### **UPDATE**

#### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(ii) Attachment of Earnings/837. Power to attach earnings.

## **(ii) Attachment of Earnings**

### **837. Power to attach earnings.**

An attachment of earnings order is an order directed to the person who appears to the magistrates' court<sup>1</sup> to have the debtor<sup>2</sup> in his employment, and operates as an instruction to that person to make periodical deductions from the debtor's earnings<sup>3</sup> and, at such times as the order may require or the magistrates' court may allow, to pay the amounts deducted to the collecting officer<sup>4</sup> of the court as specified in the order<sup>5</sup>.

A magistrates' court may make an attachment of earnings order to secure: (1) payments under a magistrates' court maintenance order<sup>6</sup>; (2) the payment of any sum adjudged to be paid by a conviction or treated (by any enactment relating to the collection and enforcement of fines<sup>7</sup>, costs<sup>8</sup>, compensation<sup>9</sup> or forfeited recognisances<sup>10</sup>) as so adjudged to be paid<sup>11</sup>; or (3) the payment of any sum required to be paid by an order under the Access to Justice Act 1999<sup>12</sup>. Except in the case of a maintenance order, an application for an attachment of earnings order may not be made unless it appears to the court<sup>13</sup> that the debtor has failed to make one or more payments required by the relevant adjudication<sup>14</sup>.

Where a magistrates' court imposes a fine on a person in respect of an offence<sup>15</sup>, and that person consents to an order being made<sup>16</sup>, the court may at the time it imposes the fine, and without the need for an application, make an attachment of earnings order to secure the payment of the fine<sup>17</sup>. Where, in the case of a person convicted of an offence, a magistrates' court makes a compensation order<sup>18</sup> requiring him to pay compensation or to make other payments<sup>19</sup>, and that person consents to an order being made<sup>20</sup>, the court may at the time it makes the compensation order, and without the need for an application, make an attachment of earnings order to secure the payment of the compensation or other payments<sup>21</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 'Debtor', in relation to an attachment of earnings order, or to proceedings in which a court has power to make an attachment of earnings order, or to proceedings arising out of such an order, means the person by whom payment is required by the relevant adjudication to be made: Attachment of Earnings Act 1971 s 2(e). An attachment of earnings order must contain prescribed particulars enabling the debtor to be identified by the employer: s 6(3). The prescribed particulars are, as far as they are known, the debtor's full name and address, his place of work and the nature of his work and works number, if any: Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 7.

'The employer', in relation to an attachment of earnings order, means the person who is required by the order to make deductions from earnings paid by him to the debtor: Attachment of Earnings Act 1971 s 25(1). 'Earnings' are any sums payable to a person: (1) by way of wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary or payable under a contract of service); (2) by way of pension (including an annuity in respect of past services, whether or not rendered to the person paying the annuity, and including periodical payments by way of compensation for the loss, abolition or relinquishment, or diminution in the emoluments, of any office or employment); (3) by way of statutory sick pay: s 24(1) (amended by the Social Security Act 1985 s 21, Sch 4 para 1). The following are not treated as earnings: (a) sums payable by any public department of the Government of Northern Ireland or of a territory outside the United Kingdom; (b) pay or allowances payable to the debtor as a member of Her Majesty's forces other than pay or allowances payable by his employer to him as a special member of a reserve force (within the meaning of the Reserve Forces Act 1996); (c) pension, allowances or benefit payable under any enactment relating to social security; (d) pension or allowances payable in respect of disablement or disability; (e) except in relation to a maintenance order wages payable to a person as a seaman, other than wages payable to him as a seaman of a fishing boat; (f) guaranteed minimum pension within the meaning of the Pension Schemes Act 1993 (see SOCIAL SECURITY AND PENSIONS): Attachment of Earnings Act 1971 s 24(2) (amended by the Social Security Pensions Act 1975 s 65(1), Sch 4 para 15; the Merchant Shipping Act 1979 s 39(1); the Social Security Act 1986 s 86, Sch 10 para 102; the Pension Schemes Act 1993 s 190, Sch 8 para 4;

and by the Reserve Forces Act 1996 (Consequential Provisions etc) Regulations 1998, SI 1998/3086, reg 6(1)). For the purposes of head (e) supra, 'fishing boat' means a vessel of whatever size, and in whatever way propelled, which is for the time being employed in sea fishing or in the sea-fishing service; 'seaman' includes every person (except masters and pilots) employed or engaged in any capacity on board any ship; and 'wages' includes emoluments: Attachment of Earnings Act 1971 s 24(3) (substituted by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 46). For the meaning of 'United Kingdom' see PARA 528 note 3 ante.

3 Attachment of Earnings Act 1971 s 6(1)(a). The reference in the text to a debtor's earnings is a reference to a debtor's earnings under s 6, Sch 3 Pt I (both as amended): see COURTS; MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 629.

4 In the case of an order made by a magistrates' court, 'collecting officer' means the justices' chief executive either for that court or for another magistrates' court specified in the order: see *ibid* s 6(7)(c) (amended by the Access to Justice Act 1999 s 90(1), Sch 13 paras 64, 66). As to the justices' chief executive see PARA 624 et seq ante.

5 Attachment of Earnings Act 1971 s 6(1)(b). As to deductions from wages see EMPLOYMENT vol 39 (2009) PARA 230 et seq.

6 *Ibid* s 1(3)(a). 'Magistrates' court maintenance order' means a maintenance order enforceable by a magistrates' court: s 2(b). 'Maintenance order' means any order specified in s 2, Sch 1 (as amended) (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 628), and includes such an order which has been discharged if any arrears are recoverable under it: s 2(a). As to the enforcement of magistrates' courts maintenance orders see PARA 829 et seq ante.

7 As to the enforcement of fines see PARAS 852-877 post.

8 As to the enforcement of costs see PARAS 878-879 post.

9 As to the enforcement of orders for compensation see PARA 852 et seq post.

10 As to the enforcement of recognisances see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq.

11 Attachment of Earnings Act 1971 s 1(3)(b).

12 *Ibid* s 1(3)(c) (amended by the Access to Justice Act 1999 s 24, Sch 4 para 8). The reference in the text to an order under the Access to Justice Act 1999 is a reference to an order under s 17(2) (terms of provision of funded services): see LEGAL AID vol 65 (2008) PARA 174. An attachment of earnings order must be in the specified form: see the Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, rr 5, 23 (as amended), Schedule Forms 1, 2. As to attachment of earnings generally see COURTS; MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 627 et seq.

13 'The court', in relation to an attachment of earnings order, means the court which made the order, subject to rules of court as to the venue for, and the transfer of, proceedings in county courts and magistrates' courts: Attachment of Earnings Act 1971 s 25(1).

14 See *ibid* s 3(3) (amended by the Maintenance Enforcement Act 1991 s 11(1), Sch 2 para 1); and the Attachment of Earnings Act 1971 s 3(3A) (added by the Maintenance Enforcement Act 1991 Sch 2 para 1). 'The relevant adjudication', in relation to any payment secured or to be secured by an attachment of earnings order, means the conviction, judgment, order or other adjudication from which there arises the liability to make the payment: Attachment of Earnings Act 1971 s 2(d).

15 *Ibid* s 3(3B)(a) (s 3(3B), (3C) added by the Criminal Procedure and Investigations Act 1996 s 53).

16 Attachment of Earnings Act 1971 s 3(3B)(b) (as added: see note 15 supra).

17 *Ibid* s 3(3B) (as added: see note 15 supra).

18 *Ie* under the Powers of Criminal Courts (Sentencing) Act 2000 s 130: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 375 et seq, 388, 481.

19 Attachment of Earnings Act 1971 s 3(3C)(a) (as added (see note 15 supra); and amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 44).

20 Attachment of Earnings Act 1971 s 3(3C)(b) (as added: see note 15 supra).

21 *Ibid* s 3(3C) (as added: see note 15 supra).

## **UPDATE**

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### **837 Power to attach earnings**

TEXT AND NOTES 1-5--1971 Act s 6(1) amended: SI 2006/1737.

NOTE 2--Also not treated as earnings is (g) a tax credit (within the meaning of the Tax Credits Act 2002) (see further SOCIAL SECURITY AND PENSIONS): Attachment of Earnings Act 1971 s 24(2) (amended by the 2002 Act Sch 3 para 1).

NOTE 4--Reference to justices' chief executive is now to designated officer: 1971 Act s 6(7)(c) (amended by the Courts Act 2003 Sch 8 para 142).

TEXT AND NOTES 7-11--Omitted: SI 2006/1737.

NOTE 12--The reference in the text is also to an order under the 1999 Act s 17A(1) (see LEGAL AID vol 65 (2008) PARA 178): 1971 Act s 1(3)(c) (amended by the Criminal Defence Service Act 2006 s 4(1)).

TEXT AND NOTES 15-21--Omitted: SI 2006/1737.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(ii) Attachment of Earnings/838. Jurisdiction.

### **838. Jurisdiction.**

A magistrates' court<sup>1</sup> has jurisdiction to hear a complaint for an attachment of earnings order<sup>2</sup> if it would have jurisdiction to enforce payment of any arrears under the related maintenance order<sup>3</sup>.

A magistrates' court also has jurisdiction to hear a complaint by or against a person residing outside England<sup>4</sup> and Wales<sup>5</sup> for the discharge or variation of an attachment of earnings order<sup>6</sup> made by a magistrates' court to secure maintenance payments<sup>7</sup>. If the person resides in Scotland or Northern Ireland the provisions which relate to the service of process on persons residing in those countries<sup>8</sup> apply in relation to the complaint<sup>9</sup>. If the person resides outside the United Kingdom<sup>10</sup> and does not appear at the time and place appointed for the hearing of the complaint, the magistrates' court may, if it thinks it reasonable in all the circumstances to do, proceed to hear and determine the complaint at the time and place appointed for the hearing, or for any adjourned hearing, in like manner as if the person had then appeared<sup>11</sup>.

Where a complaint is made to a justice of the peace<sup>12</sup> acting for the same petty sessions area<sup>13</sup> as the court which made the attachment of earnings order and it appears to him that the person in whose favour the attachment of earnings order was made<sup>14</sup>, or the debtor<sup>15</sup>, is for the time being in some petty sessions area other than that for which the justice is acting, or that the complainant is the justices' chief executive<sup>16</sup> for a magistrates' court acting for such other area, then, if it appears to the justice that the complaint may be more conveniently dealt with by a magistrates' court acting for that other area, he may cause the justices' chief executive

for the court to send the complaint by post to the justices' chief executive for the other court and for that purpose must write down the complaint, if this has not already been done<sup>17</sup>.

1 For the meaning of 'court' see PARA 837 note 13 ante; and for the meaning of 'magistrates' court' see PARA 583 ante.

2 As to attachment of earnings orders see PARA 837 ante.

3 Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 4. This provision does not apply in relation to attachment of earnings orders to secure payment of fines: r 23(2). As to the meaning of 'maintenance order' see PARA 837 note 6 ante. As to procedure for applying for an attachment of earnings order see PARA 845 post.

4 For the meaning of 'England' see PARA 501 note 7 ante.

5 For the meaning of 'Wales' see PARA 501 note 7 ante.

6 As to the discharge or variation of attachment of earnings orders see PARA 840 post.

7 See the Attachment of Earnings Act 1971 s 20(1). 'Maintenance payments' means payments required under a maintenance order: s 25(1). As to attachment of earnings for the enforcement of maintenance orders see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 627 et seq.

8 See the Maintenance Orders Act 1950 s 15 (as amended): see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 288.

9 Attachment of Earnings Act 1971 s 20(2).

10 For the meaning of 'United Kingdom' see PARA 528 note 3 ante.

11 Attachment of Earnings Act 1971 s 20(3). Section 20(3) only applies if it is proved to the satisfaction of the magistrates' court, on oath or in such other manner as may be prescribed, that the complainant has taken such steps as may be prescribed to give to that person notice of the complaint and of the time and place appointed for the hearing of it: s 20(4). The prescribed steps are as follows: the complainant must have: (1) caused written notice of the time and place appointed for the hearing to be delivered to that person; (2) caused written notice of those matters to be sent by post addressed to that person at his last known or usual place of abode or at his place of business or at some other address at which there is ground for believing that it will reach him; (3) caused notice of those matters to be inserted in one or more newspapers on one or more occasions: see the Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 10(1). Before taking such steps as mentioned in head (2) or head (3) supra the complainant must apply for directions to a justice of the peace: see r 10(2). The power to give such directions is also exercisable by a justices' clerk: r 22(2)(c). As to proof of the delivery of such a written notice and as to solemn declarations see r 10(3), (4). As to justices' clerks see PARA 631 et seq ante.

12 Alternatively the complaint may be made to a justices' clerk and be determined by him: *ibid* r 22(2)(b).

13 As to petty sessions see PARA 591 et seq ante.

14 Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 9(2)(a).

15 *Ibid* r 9(2)(b). For the meaning of 'debtor' see PARA 837 note 2 ante.

16 As to the justices' chief executive see PARA 624 et seq ante.

17 Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 9(2) (amended by SI 2001/615). As to the exceptions to the Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 9(2) see r 9(1). On receipt by the justices' chief executive for a magistrates' court of a complaint under r 9 (as amended), he must bring the complaint before the magistrates' court and the court must issue a summons requiring the person appropriate under the Attachment of Earnings Act 1971 s 19(4) (as amended) (see PARA 845 post), to appear before it, and must hear and determine the complaint: Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 9(3) (amended by SI 2001/615).

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal



SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### **838 Jurisdiction**

NOTE 11--SI 1971/809 r 10(2) amended: SI 2005/617.

TEXT AND NOTES 12-17--References to justices' chief executive are now to designated officer; for 'acting for' read 'acting in'; and references to petty sessions area are now to local justice area: SI 1971/809 r 9(2), (3) (both amended by SI 2005/617).

NOTE 12--SI 1971/809 r 22(2)(b) amended: SI 2005/617.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(ii) Attachment of Earnings/839. Applicants for attachment of earnings orders.

### **839. Applicants for attachment of earnings orders.**

The following persons may apply for an attachment of earnings order<sup>1</sup> in a magistrates' court<sup>2</sup>: (1) the person to whom payment under the relevant adjudication<sup>3</sup> is required to be made (whether directly or through an officer of any court)<sup>4</sup>; (2) without prejudice to head (1) above, where the application is to a magistrates' court for an order to secure maintenance payments, and there is in force an order<sup>5</sup> that those payments be made to the justices' chief executive<sup>6</sup> for a magistrates' court, that justices' chief executive<sup>7</sup>; and (3) the debtor<sup>8</sup>.

Where proceedings are brought in a magistrates' court for the enforcement of a maintenance order<sup>9</sup> by distress or committal<sup>10</sup>, the magistrates' court may make an attachment of earnings order to secure payments under the maintenance order instead of dealing with the case by distress or committal<sup>11</sup>.

1 As to attachment of earnings orders see PARA 837 ante.

2 For the meaning of 'court' see PARA 837 note 13 ante; and for the meaning of 'magistrates' court' see PARA 583 ante.

3 Attachment of Earnings Act 1971 s 3(1). For the meaning of 'the relevant adjudication' see PARA 837 note 14 ante.

4 Ibid s 3(1)(a).

5 Ie an order under the Magistrates' Courts Act 1980 s 59(3)(b) (as substituted) (see PARA 820 ante) or the Maintenance Orders Act 1950 s 19(2) (see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 296).

6 As to the justices' chief executive see PARA 624 et seq ante.

7 Attachment of Earnings Act 1971 s 3(1)(c) (amended by the Magistrates' Courts Act 1980 s 154, Sch 7 para 97; the Maintenance Enforcement Act 1991 s 11(1), Sch 2 para 1; and the Access to Justice Act 1999 s 90(1), Sch 13 paras 64, 65).

8 Attachment of Earnings Act 1971 s 3(1)(d)(i). For the meaning of 'debtor' see PARA 837 note 2 ante.

9 As to the meaning of 'maintenance order' see PARA 837 note 6 ante. As to the enforcement of magistrates' courts maintenance orders see PARA 829 et seq ante.

10 Ie under the Magistrates' Courts Act 1980 s 76 (as amended); see PARA 860 post. As to the issue of distress warrants under the Magistrates' Courts Act 1980 see further DISTRESS vol 13 (2007 Reissue) PARAS 1134-1147.

11 Attachment of Earnings Act 1971 s 3(4)(b).

## **UPDATE**

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### **839 Applicants for attachment of earnings orders**

TEXT AND NOTES 6, 7--References to justices' chief executive are now to designated officer: Attachment of Earnings Act 1971 s 3(1)(c) (amended by the Courts Act 2003 Sch 8 para 141).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(ii) Attachment of Earnings/840. Variation, lapse and discharge of attachment of earnings orders.

### **840. Variation, lapse and discharge of attachment of earnings orders.**

The magistrates' court<sup>1</sup> may make an order discharging or varying an attachment of earnings order<sup>2</sup>.

Where a complaint by the debtor<sup>3</sup> for the variation or discharge of an attachment of earnings order is made against a person and that person does not appear at the time and place appointed for the hearing of the complaint, the magistrates' court may, if it thinks it reasonable in all the circumstances to do so, proceed to hear and determine the complaint, notwithstanding the absence of proof that that person had knowledge of the summons<sup>4</sup>, if it is proved to the satisfaction of the magistrates' court that the summons in respect of the complaint was served properly<sup>5</sup> and the complainant has caused notice of the complaint and of the time and place appointed for the hearing to be inserted in one or more newspapers<sup>6</sup> on one or more occasions<sup>7</sup>.

Where an attachment of earnings order has lapsed<sup>8</sup> on the debtor's ceasing to be in the employment of the person to whom the order was directed, and it appears to a magistrates' court, acting for the same petty sessions area as the court which made the order, that the debtor has subsequently entered the employment of a person (whether the same as before or another), the magistrates' court may, of its own motion, vary the order by directing it to that person and may make any consequential amendment to the order made necessary by this variation<sup>9</sup>.

A magistrates' court acting for the same petty sessions area as the magistrates' court which made an attachment of earnings order may, of its own motion, discharge the order where: (1) it appears to the magistrates' court that the debtor is not in the employment of the person to whom the order is directed and that the likelihood of the debtor's entering the employment of any person is not such as to justify preserving the order<sup>10</sup>; or (2) the related maintenance order<sup>11</sup> ceases to have effect<sup>12</sup> because of the remarriage of the person entitled to receive payments under it<sup>13</sup>.

<sup>1</sup> For the meaning of 'court' see PARA 837 note 13 ante; and for the meaning of 'magistrates' court' see PARA 583 ante.

2 Attachment of Earnings Act 1971 s 9(1). As to attachment of earnings orders see PARA 837 ante. As to the jurisdiction of a magistrates' court to discharge or vary certain orders against persons residing outside England and Wales see PARA 838 ante. For the meaning of 'England' see PARA 501 note 7 ante; and for the meaning of 'Wales' see PARA 501 note 7 ante.

3 For the meaning of 'debtor' see PARA 837 note 2 ante.

4 le as required by the Magistrates' Courts Rules 1981, SI 1981/552, r 99(2): Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 11(1); Interpretation Act 1978 s 17(2)(a).

5 le in accordance with the Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 99(1)(b), or r 99(1)(c) (see PARA 690 ante): r 11(1); Interpretation Act 1978 s 17(2)(a).

6 For the purpose of proving the insertion of a notice in a newspaper, the Magistrates' Courts Rules 1981, SI 1981/552, r 67 (proof of service) (see PARA 691 ante) applies: see r 11(3); Interpretation Act 1978 s 17(2)(a).

7 Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 11(1). Where it is proposed to rely on r 11, the complainant must apply for directions to a justice of the peace acting for the same petty sessions area as the court by which the complaint is to be heard, and the giving of notice in a newspaper is only effective if given in accordance with such directions: r 11(2). The power to give such directions is also exercisable by a justices' clerk: see r 22(2)(c). However, r 11 does not apply to attachment of earnings orders in respect of fines: see r 23(2). As to petty sessions see PARA 591 et seq ante. As to justices' clerks see PARA 631 et seq ante.

8 le under the Attachment of Earnings Act 1971 s 9(4): see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 634.

9 Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 12. The power of a magistrates' court under r 12 to vary an order may also be exercised by a justices' clerk: see r 22(2)(d).

10 See ibid r 13(1).

11 As to the meaning of 'maintenance order' see PARA 837 note 6 ante.

12 le by virtue of the Matrimonial Proceedings and Property Act 1970 ss 7, 21 (both repealed) s 30 (as amended).

13 Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 13(2). The power of a magistrates' court to discharge such an order may also be exercised by a justices' clerk: see r 22(2)(d). As to attachment of earnings for the enforcement of maintenance orders see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 627 et seq.

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 840 Variation, lapse and discharge of attachment of earnings orders

TEXT AND NOTES 1, 2--1971 Act s 9(1) amended: SI 2006/1737.

NOTE 7--For 'acting for' read 'acting in'; and for 'petty sessions area' read 'local justice area': SI 1971/809 r 11(2) (amended by SI 2005/617).

TEXT AND NOTES 8-13--References to justices' chief executive are now to designated officer; for 'acting for' read 'acting in'; and references to petty sessions area are now to local justice area: SI 1971/809 rr 12, 13 (both amended by SI 2005/617).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(ii) Attachment of Earnings/841. Temporary variation order.

#### **841. Temporary variation order.**

Where an attachment of earnings order<sup>1</sup> has been made by a magistrates' court<sup>2</sup>, a justice of the peace acting for the same petty sessions area<sup>3</sup> as the court which made the order may make a temporary variation order<sup>4</sup>. Such an order may be made on written application by the debtor<sup>5</sup> on the ground of a material change in his resources and needs since the attachment of earnings order was made or last varied, and may vary the attachment of earnings order for a period of not more than four weeks by an increase of the protected earnings rate<sup>6</sup>. The justices' chief executive<sup>7</sup> for the magistrates' court which made the attachment of earnings order must cause a copy of any temporary variation order to be served on the employer<sup>8</sup> and must give him notice if the temporary variation order is discharged<sup>9</sup>. The justices' chief executive must also send a copy of the temporary variation order to the person entitled to receive payments under the maintenance order<sup>10</sup>, whether directly or through an officer of any court<sup>11</sup>.

Where an application for the variation or discharge of an attachment of earnings order is made to a magistrates' court and there is in existence a temporary variation order in respect of the attachment of earnings order, the court may, of its own motion, discharge the temporary variation order<sup>12</sup>.

1 As to attachment of earnings orders see PARA 837 ante.

2 For the meaning of 'court' see PARA 837 note 13 ante; and for the meaning of 'magistrates' court' see PARA 583 ante.

3 As to petty sessions see PARA 591 et seq ante.

4 See the Attachment of Earnings Act 1971 s 9(3)(b); and the Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 14(1).

5 For the meaning of 'debtor' see PARA 837 note 2 ante.

6 Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 14(1). Power to make such orders may also be exercised by a justices' clerk: see r 22(2)(e). For the form of temporary variation orders see r 14(2), Schedule Form 3. See PARA 505 note 12 ante. As to the variation of attachment of earnings orders see PARA 840 ante. As to justices' clerks see PARA 631 et seq ante.

7 As to the justices' chief executive see PARA 624 et seq ante.

8 For the meaning of 'employer' see PARA 837 note 2 ante.

9 Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 14(3).

10 As to the meaning of 'maintenance order' see PARA 837 note 6 ante. As to attachment of earnings for the enforcement of maintenance orders see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 627 et seq.

11 Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 14(3).

12 Ibid r 14(4).

#### **UPDATE**

#### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

## 841 Temporary variation order

TEXT AND NOTES--References to justices' chief executive are now to designated officer; for 'acting for' read 'acting in'; and references to petty sessions area are now to local justice area: SI 1971/809 r 14 (amended by SI 2005/617).

NOTE 6--SI 1971/809 r 14(2), Schedule revoked: SI 2003/1236.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(ii) Attachment of Earnings/842. Consolidated attachment orders.

## 842. Consolidated attachment orders.

Where a magistrates' court<sup>1</sup> has power to make more than one attachment of earnings order<sup>2</sup> in respect of the liabilities of a debtor<sup>3</sup>, it may make a consolidated attachment order to discharge those liabilities<sup>4</sup>. Where a magistrates' court has power to make an attachment of earnings order in respect of a debtor who is already subject to such an order, whether or not it is itself a consolidated attachment order, made by any magistrates' court, the court may discharge the existing order and make a consolidated attachment order in respect of that debtor<sup>5</sup>. Where two or more attachment of earnings orders, whether or not they are themselves consolidated attachment orders, made by magistrates' courts are in existence in respect of one debtor, a magistrates' court acting for the same petty sessions area as one of those courts may discharge the existing orders and make a consolidated attachment order in respect of that debtor<sup>6</sup>.

Where an employer<sup>7</sup> applies in writing to the justices' chief executive for the magistrates' court which has power to make a consolidated attachment order requesting the court to make such an order, the justices' chief executive must bring the application before the magistrates' court, and, if it appears to the court that the application is justified, the court must proceed as if it had determined of its own motion to make such an order<sup>8</sup>.

Where a magistrates' court makes a consolidated attachment order, it must specify in the order such normal deduction rate<sup>9</sup> as it thinks reasonable<sup>10</sup>. A justices' chief executive for a magistrates' court receiving a payment under a consolidated attachment order must apply the money in payment of the sums secured by the order, paying first any sums previously secured by an attachment of earnings order which was discharged in consequence of the making of the consolidated attachment order<sup>11</sup>.

1 For the meaning of 'court' see PARA 837 note 13 ante; and for the meaning of 'magistrates' court' see PARA 583 ante.

2 For these purposes, references to an attachment of earnings order are references to such an order made by a magistrates' court and do not include such an order made to secure payments under a magistrates' court maintenance order: Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 15(1). For the meaning of 'magistrates' court maintenance order' see PARA 837 note 6 ante. As to the meaning of 'maintenance order' see PARA 837 note 6 ante. As to attachment of earnings orders generally see PARA 837 ante.

3 For the meaning of 'debtor' see PARA 837 note 2 ante.

4 Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 15(2). A magistrates' court may exercise this power either of its own motion or on the application of the debtor: r 15(5). A debtor may apply for a consolidated attachment order in this case during the hearing of the proceedings for the enforcement of the fine or other liability: r 15(6)(i).

5 Ibid r 15(3). The magistrates' court may exercise this power either of its own motion or on the application of the debtor: r 15(5). A debtor may apply for a consolidated attachment order in this case during the hearing of the proceedings for the enforcement of the fine or other liability: r 15(6)(i). Where a magistrates' court has power to make a consolidated attachment order under r 15(3) or r 15(4) (see the text and note 6 infra) and a relevant attachment of earnings order has been made by a magistrates' court acting for another petty sessions area, the first mentioned court must cause notice to be given to the justices' chief executive for the second mentioned court and must not discharge that attachment of earnings order unless the enforcement of the sum to which the order relates is transferred to the first mentioned court under the Magistrates' Courts Act 1980 s 89 (as amended) (transfer of fine order) (see PARA 856 post), the Administration of Justice Act 1970 s 43 (repealed), Sch 10 para 7 (repealed) (transfer of enforcement of legal aid contribution orders) or the Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 16 (as amended) (see infra) as the case may be: r 15(9) (amended by the Magistrates' Courts (Transfer of Justices' Clerks' Functions) (Miscellaneous Amendments) Rules 2001, SI 2001/615, r 2(v), Schedule para 32); Magistrates' Courts Act 1980 s 154, Sch 8 para 5. As to the provisions relating to the transfer of fines with a view to making consolidated attachment orders see the Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 16. As to petty sessions see PARA 591 et seq ante. As to the justices' chief executive see PARA 624 et seq ante.

6 Ibid r 15(4). The court may exercise this power either of its own motion or on the application of the debtor: r 15(5). A debtor may apply for a consolidated attachment order in this case by complaint: r 15(6)(ii). Before the court exercises of its own motion the powers conferred under r 15(4), it must cause written notice to be given to the debtor of his right to make representations to the court: r 15(8). As to the notices to be given and transfers to be made in certain circumstances see r 15(9) (as amended); and note 5 supra.

7 For the meaning of 'employer' see PARA 837 note 2 ante.

8 Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 15(7) (amended by SI 2001/615).

9 As to the reduction of the normal deduction rate in certain cases see the Attachment of Earnings Act 1971 s 10; and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 633.

10 Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 15(10). This rate may be less than the sum of the normal deduction rates specified in any orders discharged by the court: r 15(10).

11 Ibid r 17(1) (amended by SI 2001/615). Where two or more attachment of earnings orders were discharged in consequence of the making of the consolidated attachment order the sums due under the orders must be paid in the chronological order of the orders: Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 17(2).

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 842 Consolidated attachment orders

TEXT AND NOTES--References to justices' chief executive are now to designated officer; for 'acting for' read 'acting in'; and references to petty sessions area are now to local justice area: SI 1971/809 rr 15, 17 (both amended by SI 2005/617).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(ii) Attachment of Earnings/843. Restrictions on actions taken by collecting officer.

### 843. Restrictions on actions taken by collecting officer.

A justices' chief executive<sup>1</sup> who is entitled to receive payments under a maintenance order<sup>2</sup> for transmission to another person must not<sup>3</sup>:

- 359 (1) apply for an attachment of earnings order<sup>4</sup> to secure payments under the maintenance order<sup>5</sup>;
- 360 (2) apply for an order discharging or varying such an attachment of earnings order<sup>6</sup>; or
- 361 (3) apply for a determination<sup>7</sup> as to whether particular payments are earnings<sup>8</sup>,

unless he is requested in writing to do so by a person entitled to receive the payments through him<sup>9</sup>. Where the justices' chief executive is so requested<sup>10</sup>, he must comply with the request unless it appears to him unreasonable in the circumstances to do so<sup>11</sup>, and the person by whom the request was made has the same liabilities for all the costs properly incurred in or about any proceedings taken in pursuance of the request as if the proceedings had been taken by that person<sup>12</sup>.

1 As to the justices' chief executive see PARA 624 et seq ante.

2 As to the meaning of 'maintenance order' see PARA 837 note 6 ante.

3 Attachment of Earnings Act 1971 s 18(1) (amended by the Access to Justice Act 1999 s 90(1), Sch 13 paras 64, 68(1), (2)).

4 As to attachment of earnings orders see PARA 837 ante.

5 Attachment of Earnings Act 1971 s 18(1)(a). As to attachment of earnings for the enforcement of maintenance orders see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 627 et seq.

6 Ibid s 18(1)(b). This restriction does not apply to an application for a variation order under s 10(3) (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 633): s 18(1)(b).

7 Ie a determination under ibid s 16 (see PARA 844 post). As to such a determination see COURTS.

8 Ibid s 18(1)(c).

9 Ibid s 18(1).

10 Ibid s 18(2) (amended by the Access to Justice Act 1999 Sch 13 paras 64, 68(1), (3)).

11 Attachment of Earnings Act 1971 s 18(2)(a).

12 Ibid s 18(2)(b). For the purposes of s 18(2)(b), any application made by a justices' chief executive as required by s 10(3) (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 633) is deemed to be made on the request of the person in whose favour the attachment of earnings order in question was made: s 18(3) (amended by the Access to Justice Act 1999 Sch 13 paras 64, 68(1), (3)).

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 843 Restrictions on actions taken by collecting officer

TEXT AND NOTES--References to justices' chief executive are now to designated officer for a magistrates' court: Attachment of Earnings Act 1971 s 18(1)-(3) (amended by the Courts Act 2003 Sch 8 para 143).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(ii) Attachment of Earnings/844. Application to determine earnings.

#### **844. Application to determine earnings.**

Where an attachment of earnings order<sup>1</sup> is in force, the magistrates' court<sup>2</sup> must determine on the application of:

- 362 (1) the employer<sup>3</sup>;
- 363 (2) the debtor<sup>4</sup>;
- 364 (3) the person to whom payment under the relevant adjudication<sup>5</sup> is required to be made, whether directly or through an officer of any court<sup>6</sup>; and
- 365 (4) without prejudice to head (3) above, where the application is in respect of an attachment of earnings order made to secure payments under a magistrates' court maintenance order<sup>7</sup>, the collecting officer<sup>8</sup>,

whether payments to the debtor of a particular class or description specified by the application are earnings<sup>9</sup> for the purpose of the order<sup>10</sup>. On making such a determination, a magistrates' court may in its discretion make such order as it thinks just and reasonable for payment by any of the persons mentioned in heads (1) to (4) above of the whole or any part of the costs of the determination<sup>11</sup>. Costs ordered to be paid are: (a) in the case of costs to be paid by the debtor to the person in whose favour the attachment of earnings order in question was made, are deemed, if the attachment of earnings order was made to secure maintenance payments<sup>12</sup>, to be a sum due under the related maintenance order<sup>13</sup>, and, otherwise to be a sum due to the justices' chief executive<sup>14</sup> for the court<sup>15</sup>; and (b) in any other case, to be enforceable as a civil debt<sup>16</sup>.

1 As to attachment of earnings orders see PARA 837 ante.

2 For the meaning of 'court' see PARA 837 note 13 ante; and for the meaning of 'magistrates' court' see PARA 583 ante.

3 Attachment of Earnings Act 1971 s 16(2)(a). Where an application under s 16 is made by the employer, he must not incur any liability for non-compliance with the order as respects any payments of the class or description specified by the application which are made by him to the debtor while the application, or any appeal in consequence thereof, is pending: s 16(3). However, s 16(3) does not, unless the magistrates' court otherwise orders, apply as respects such payments if the employer subsequently withdraws the application or, as the case may be, abandons the appeal: s 16(3). For the meaning of 'employer' see PARA 837 note 2 ante.

4 Ibid s 16(2)(b). For the meaning of 'debtor' see PARA 837 note 2 ante.

5 For the meaning of 'the relevant adjudication' see PARA 837 note 14 ante.

6 Attachment of Earnings Act 1971 s 16(2)(c).

7 For the meaning of 'magistrates' court maintenance order' see PARA 837 note 6 ante. As to the meaning of 'maintenance order' see PARA 837 note 6 ante.

8 Attachment of Earnings Act 1971 s 16(2)(d). As to restrictions on actions taken by collecting officers see PARA 843 ante.

9 For the meaning of 'earnings' see PARA 837 note 2 ante.



10 Attachment of Earnings Act 1971 s 16(1). The employer is entitled to give effect to any determination for the time being in force under s 16: s 16(1).

11 Ibid s 21(1) (which is expressed to be subject to s 18(2)(b) (as amended): see PARA 843 ante.

12 As to attachment of earnings for the enforcement of maintenance orders see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 627 et seq.

13 Attachment of Earnings Act 1971 s 21(2)(a)(i).

14 As to the justices' chief executive see PARA 624 et seq ante.

15 Attachment of Earnings Act 1971 s 21(2)(a)(ii) (amended by the Access to Justice Act 1999 s 90(1), Sch 13 paras 64, 69).

16 Attachment of Earnings Act 1971 s 21(2)(b). As to the enforcement of civil debts see PARA 828 ante.

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 844 Application to determine earnings

TEXT AND NOTES 14, 15--Reference to justices' chief executive for the court is now to designated officer for the magistrates' court: Attachment of Earnings Act 1971 s 21(2)(a)(ii) (amended by the Courts Act 2003 Sch 8 para 144).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(ii) Attachment of Earnings/845. Procedure for applications.

### 845. Procedure for applications.

An application to a magistrates' court<sup>1</sup> for an attachment of earnings order<sup>2</sup>, or an order discharging or varying an attachment of earnings order<sup>3</sup> or for a determination of earnings<sup>4</sup> must be made by complaint<sup>5</sup>.

For the purposes of the provisions<sup>6</sup> relating to the issue of a summons directed to the person against whom an order may be made in pursuance of a complaint<sup>7</sup>: (1) the power to make an order in pursuance of a complaint by the debtor<sup>8</sup> for an attachment of earnings order, or the discharge or variation of such an order, is deemed to be a power to make an order against the person to whom payment under the relevant adjudication<sup>9</sup> is required to be made, whether directly or through an officer of any court<sup>10</sup>; and (2) the power to make an attachment of earnings order, or an order discharging or varying an attachment of earnings order, in pursuance of a complaint by any other person<sup>11</sup> is deemed to be a power to make an order against the debtor<sup>12</sup>.

1 For the meaning of 'court' see PARA 837 note 13 ante; and for the meaning of 'magistrates' court' see PARA 583 ante.

2 As to attachment of earnings orders see PARA 837 ante.

3 As to the discharge or variation of an attachment of earnings order see PARA 840 ante.

4 As to the determination of earnings see PARA 844 ante.

5 See the Attachment of Earnings Act 1971 s 19(1), (3). Rules of court may make provision excluding s 19(1) in the case of an application for a temporary variation order: s 19(2). As to temporary variation orders see PARA 841 ante.

A complaint for an attachment of earnings order may be heard notwithstanding that it was not made within the six months allowed by the Magistrates' Courts Act 1980 s 127(1) (see PARA 589 ante): Attachment of Earnings Act 1971 s 19(5) (amended by the Magistrates' Courts Act 1980 s 154, Sch 7 para 100). For the forms of attachment of earnings orders see the Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, rr 5, 23(3), Schedule Form 1 (maintenance), Form 2 (lump sum).

6 As to the provisions of the Magistrates' Courts Act 1980 s 51: see PARA 678 ante.

7 Attachment of Earnings Act 1971 s 19(4) (amended by the Magistrates' Courts Act 1980 Sch 7 para 100).

8 For the meaning of 'the debtor' see PARA 837 note 2 ante.

9 For the meaning of 'the relevant adjudication' see PARA 837 note 14 ante.

10 Attachment of Earnings Act 1971 s 19(4)(a).

11 This includes a complaint in proceedings to which *ibid* s 3(4)(b) (as amended) (application for order) applies: see PARA 434 ante.

12 *Ibid* s 19(4)(b).

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 845 Procedure for applications

NOTE 5--SI 1971/809 rr 5, 23(3), Schedule revoked: SI 2003/1236.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(ii) Attachment of Earnings/846. Service of orders and notices.

#### 846. Service of orders and notices.

Where a magistrates' court<sup>1</sup> makes an attachment of earnings order<sup>2</sup> or an order varying or discharging an attachment of earnings order<sup>3</sup>, the justices' chief executive<sup>4</sup> for the court must cause a copy to be served on the employer<sup>5</sup> and must send a copy to the debtor<sup>6</sup>. Where an attachment of earnings order made by a magistrates' court ceases to have effect<sup>7</sup>, notice of the cessation must be given to the employer<sup>8</sup>.

Where an order is made which relates to statements of earnings<sup>9</sup> is directed to the debtor or to a person appearing to be an employer of the debtor or where a copy<sup>10</sup> of an order is to be served or a notice is to be given to any person:

366 (1) service may be effected on, or notice may be given to a person, other than a corporation, by delivering it to the person to whom it is directed or by sending it by

post in a letter addressed to him at his last known or usual place of abode or, in the case of an employer or a person appearing to be an employer of the debtor, at his place of business<sup>11</sup>;

- 367 (2) service may be effected on, or notice given to, a corporation by delivering the document at, or sending it to: (a) such office or place as the corporation may have specified<sup>12</sup> in writing to the magistrates' court in relation to the debtor or to a class or description of person to which he belongs<sup>13</sup>; or (b) the registered office of the corporation if that office is in England<sup>14</sup> and Wales<sup>15</sup> or, if there is no registered office in England and Wales, any place therein where the corporation trades or conducts its business<sup>16</sup>.

Where the justices' chief executive for a magistrates' court which has made an attachment of earnings order is informed of a debtor's change of address, he must notify the new address to the county court registrar for the district in which the debtor resided before the change of address<sup>17</sup>.

1 For the meaning of 'court' see PARA 837 note 13 ante; and for the meaning of 'magistrates' court' see PARA 583 ante.

2 As to attachment of earnings orders see PARA 837 ante.

3 As to the discharge or variation of an attachment of earnings order see PARA 840 ante.

4 As to the justices' chief executive see PARA 624 et seq ante.

5 For the meaning of 'employer' see PARA 837 note 2 ante.

6 Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 6(1) (amended by SI 2001/615). Where a justices' chief executive for a magistrates' court causes a copy of an order or notice to be given to any person under Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 6 (as amended) he must cause a copy of the order or notice to be given also to the county court registrar for the district in which the debtor resides: r 21(1) (amended by SI 2001/615). For the meaning of 'the debtor' see PARA 837 note 2 ante. For the meaning of 'county court' see PARA 573 note 2 ante.

7 Ie as provided in the Attachment of Earnings Act 1971 s 8(3) (as amended) (interrelation with alternative remedies open to creditors), s 11(1) (attachment order in respect of maintenance payments to cease to have effect on the occurrence of certain events): see COURTS.

8 Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 6(2). The notice must be given by the justices' chief executive for the magistrates' court: (1) which made or confirmed the maintenance order (in a case to which the Attachment of Earnings Act 1971 s 11(1)(c) applies (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 635)); (2) in which the maintenance order is registered under any enactment (in a case to which s 11 (a), (b) or (d) applies (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 635)); (3) which issued the warrant of commitment or exercised the power conferred by the Magistrates' Courts Act 1980 s 77(2) (as amended) (see PARA 860 post) (in a case to which the Attachment of Earnings Act 1971 s 8 (as amended) applies (see COURTS)): Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 6(3) (amended by SI 2001/615). As to the meaning of 'maintenance order' see PARA 837 note 6 ante. As to warrants of commitment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1162.

9 Ie under the Attachment of Earnings Act 1971 s 14 (as amended): see CIVIL PROCEDURE vol 12 (2009) PARA 1437.

10 Ie under the Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809 (as amended).

11 Ibid r 20(a).

12 Ie for the purposes of the Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809 (as amended).

13 Ibid r 20(b)(i).

14 For the meaning of 'England' see PARA 501 note 7 ante.

15 For the meaning of 'Wales' see PARA 501 note 7 ante.

16 Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 20(b)(ii).

17 Ibid r 21(2) (amended by SI 2001/615).

## **UPDATE**

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### **846 Service of orders and notices**

TEXT AND NOTES 1-6--For references to 'justices chief executive' read 'designated officer': SI 1971/809 rr 6(1), 21(1) (both further amended by SI 2005/617).

NOTE 8--For 'justices chief executive' read 'designated officer': SI 1971/809 r 6(3) (amended by SI 2005/617).

TEXT AND NOTE 17--For 'justices chief executive' read 'designated officer': SI 1971/809 r 21(2) (amended by SI 2005/617).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(ii) Attachment of Earnings/847. Method of payment.

### **847. Method of payment.**

A justices' chief executive<sup>1</sup> for a magistrates' court<sup>2</sup> to whom any payment under an attachment of earnings order<sup>3</sup> is to be made must notify the employer<sup>4</sup> and the person entitled to receive payments under the related maintenance order<sup>5</sup> of the hours during which, and the place at which, payments are to be made and received<sup>6</sup>. If an employer sends by post any payments under an attachment of earnings order to a justices' chief executive for a magistrates' court, he does so at his own risk and expense<sup>7</sup>. A justices' chief executive for a magistrates' court may send by post any payment under an attachment of earnings order to the person entitled to receive payments under the related maintenance order at the request and at the risk of that person<sup>8</sup>.

Where imprisonment or other detention has been imposed for the purpose of enforcing a maintenance order<sup>9</sup>, the justices' chief executive for a magistrates' court to whom any payment under a related attachment of earnings order is to be made<sup>10</sup>: (1) in relation to such payment is a person authorised to receive payment under the statutory provisions<sup>11</sup> relating to the reduction of detention on payment<sup>12</sup>; (2) on receiving such payment must notify the person otherwise authorised to receive payment<sup>13</sup> of the sum received<sup>14</sup>.

1 As to the justices' chief executive see PARA 624 et seq ante.

2 For the meaning of 'court' see PARA 837 note 13 ante; and for the meaning of 'magistrates' court' see PARA 583 ante.

3 As to attachment of earnings orders see PARA 837 ante.

- 4 For the meaning of 'employer' see PARA 837 note 2 ante.
- 5 As to the meaning of 'maintenance order' see PARA 837 note 6 ante.
- 6 Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 18(1) (r 18 amended by SI 2001/615).
- 7 Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 18(2) (as amended: see note 6 supra).
- 8 Ibid r 18(3) (as amended: see note 6 supra).
- 9 As to the enforcement of magistrates' courts maintenance orders see PARA 829 et seq ante.
- 10 Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 19(1) (amended by SI 2001/615).
- 11 Ie under the Magistrates' Courts Act 1980 s 79(2) (see PARA 867 post): Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 19(1)(a); Magistrates' Courts Act 1980 s 154, Sch 8 para 5.
- 12 Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 19(1)(a).
- 13 Ie under the Magistrates' Courts Rules 1981, SI 1981/552, r 55(1) (see PARA 852 post): Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 19(1)(b); Interpretation Act 1978 s 17(2)(a).
- 14 Magistrates' Courts (Attachment of Earnings) Rules 1971, SI 1971/809, r 19(1)(b). Where a person receives notice of the receipt of a sum under r 19(1) (as amended), he must note the receipt of that sum on the warrant of commitment, if any, held by him: r 19(2). As to warrants of commitment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1162.

## **UPDATE**

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### **847 Method of payment**

TEXT AND NOTES--For references to 'justices chief executive' read 'designated officer': SI 1971/809 rr 18, 19 (both further amended by SI 2005/617).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/ (iii) Orders other than for Payment of Money/851A. Power of magistrates' court to suspend execution of committal order.

## **(iii) Orders other than for Payment of Money**

### **UPDATE**

### **848-851 Orders other than for Payment of Money**

Material relating to this part has been revised and published under the title SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq.

For the power of a magistrates' court to suspend the execution of a committal order see PARA 851A.

## **851A. Power of magistrates' court to suspend execution of committal order.**

If a magistrates' court has power<sup>1</sup> to commit a person to custody for breach of a relevant requirement<sup>2</sup>, the court may by order direct that the execution of the order of committal is to be suspended for such period or on such terms and conditions as it may specify<sup>3</sup>.

1    Ibid under the Magistrates' Courts Act 1980 s 63(3) (as amended), see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq.

2    For these purposes, 'a relevant requirement' means: (1) an occupation order or non-molestation order; (2) an exclusion requirement included by virtue of the Children Act 1989 s 38A (as added) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 290) in an interim care order made under s 38 (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 288 et seq); or (3) an exclusion requirement included by virtue of s 44A (as added) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 587) in an emergency protection order under s 44 (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 583 et seq); Family Law Act 1996 s 50(2). For the meaning of 'occupation order' see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 289; and for the meaning of 'non-molestation order' see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 716.

3    Ibid s 50(1). As to procedure on dealing with contempt before a magistrates' court generally see *Practice Direction (Magistrates' Courts: Contempt)* (2001) Times, 11 June.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(iv) Fines and Compensation/A. PAYMENT AND ENFORCEMENT ON CONVICTION/852. Payment of fines.

### **(iv) Fines and Compensation**

#### **A. PAYMENT AND ENFORCEMENT ON CONVICTION**

##### **852. Payment of fines.**

A person adjudged by the conviction of a magistrates' court<sup>1</sup> to pay any sum<sup>2</sup> must, unless the court otherwise directs, pay that sum, or any instalment of that sum, to the justices' chief executive<sup>3</sup> for the court<sup>4</sup>. Where a period of imprisonment or other detention has been imposed in default of payment of any such sum, or for want of sufficient distress, part payment of the sum may be made to one of the following persons<sup>5</sup>:

368 (1) unless a warrant of distress or commitment has been issued<sup>6</sup>, the justices' chief executive for the court enforcing payment of the sum, or any person appointed<sup>7</sup> to supervise the offender<sup>8</sup>;

369 (2) where the issue of a warrant of commitment has been suspended on conditions which provide for the payment to be made to the justices' chief executive for some other magistrates' court, that chief executive<sup>9</sup>;

370 (3) any constable holding a warrant of distress or commitment or, where the warrant is directed to some other person, that person<sup>10</sup>; or

371 (4) the governor or keeper<sup>11</sup> of the prison or place in which the defaulter is detained, or other person having lawful custody<sup>12</sup> of the defaulter<sup>13</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 As to the use of the term 'a sum adjudged to be paid by conviction or order of a magistrates' court' see PARA 675 note 23 ante. A fine imposed or a recognisance forfeited by the Crown Court is treated for the purposes of collection, enforcement and remission of the fine or other sum as having been imposed or forfeited by a magistrates' court specified in an order made by the Crown Court, or if no such order is made, by the magistrates' court by which the offender was committed to the Crown Court to be tried or dealt with or by which he was sent to the Crown Court for trial under the Crime and Disorder Act 1998 s 51 (no committal proceedings for indictable only offences) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1131), and in the case of a fine, as having been so imposed on conviction by the magistrates' court in question: Powers of Criminal Courts (Sentencing) Act 2000 s 140(1). For the meaning of 'Crown Court' see PARA 508 note 9 ante. As to recognisances see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 251 et seq. As to the recovery and application of fines imposed and recognisances forfeited by the Crown Court see further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1684.

3 As to the justices' chief executive see PARA 624 et seq ante.

4 Magistrates' Courts Rules 1981, SI 1981/552, r 48(1) (substituted by SI 1992/457; and amended by SI 2001/610). Where payment of any sum or instalment of any sum adjudged to be paid by the conviction or order of a magistrates' court is made to any person other than the justices' chief executive for the court, that person, unless he is the person to whom the court has directed payment to be made or, in the case of a child, is the person with whom the child has his home, must, as soon as may be, account for and, if the justices' chief executive so requires, pay over the sum or instalment to the justices' chief executive for the court: Magistrates' Courts Rules 1981, SI 1981/552, r 48(2) (amended by SI 2001/610). Where payment of any sum adjudged to be paid by the conviction or order of a magistrates' court, or any instalment of such a sum, is directed to be made to the justices' chief executive for some other magistrates' court, the justices' chief executive for the court that adjudged the sum to be paid must pay over any sums received by him on account of the said sum or instalment to the justices' chief executive for that other court: Magistrates' Courts Rules 1981, SI 1981/552, r 48(3) (amended by SI 2001/610).

The justices' chief executive for a magistrates' court must give or send a receipt to any person who makes a payment to him in pursuance of a conviction or order of a magistrates' court and who asks for a receipt: Magistrates' Courts Rules 1981, SI 1981/552, r 49 (amended by SI 2001/610).

5 See the Magistrates' Courts Act 1980 s 79(2); Magistrates' Courts Rules 1981, SI 1981/552, r 55(1). No person is required to receive in part payment an amount which, or so much of an amount as, will not procure a reduction of the period for which the defaulter is committed or ordered to be detained: r 55(1) proviso (ii). As to the reduction of the period of detention by part payment see PARA 867 post.

6 As to warrants of commitment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1162; and as to warrants of distress see DISTRESS vol 13 (2007 Reissue) PARA 1134 et seq. As to the issue of warrants of distress and commitment see PARA 860 et seq post.

7 Ie under the Magistrates' Courts Act 1980 s 88 (as amended): see PARA 874 post. Where a person appointed under s 88 (as amended) to supervise an offender receives payment of any sum, he must send it forthwith to the justices' chief executive for the court which appointed him: Magistrates' Courts Rules 1981, SI 1981/552, r 55(4) (amended by SI 2001/610).

8 Magistrates' Courts Rules 1981, SI 1981/552, r 55(1)(a) (amended by SI 2001/610).

9 Magistrates' Courts Rules 1981, SI 1981/552, r 55(1)(b) (amended by SI 2001/610). Where the justices' chief executive for a court other than the court enforcing payment of the sums receives payment of any sum he must inform the justices' chief executive for the other court: Magistrates' Courts Rules 1981, SI 1981/552, r 55(3) (amended by SI 2001/610).

10 Magistrates' Courts Rules 1981, SI 1981/552, r 55(1)(c).

11 The governor or keeper is not, however, required to accept any sum tendered in part payment except on a weekday between 9 am and 5 pm: ibid r 55(1) proviso (i).

12 Where a person having custody of a defaulter receives payment of any sum he must note the receipt on the warrant of commitment: ibid r 55(2).

13 Ibid r 55(1)(d).

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

## **852-877 Fines and Compensation**

The Courts Act 2003 s 97, Sch 5 make provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings: see PARA 877A.

As to the mutual recognition of financial penalties see PARA 877B.

Provision is also made for the discharge of fines by means of unpaid work: see s 97, Sch 6; Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004, SI 2004/2196; Discharge of Fines by Unpaid Work (Issue of Summons) Regulations 2004, SI 2004/2197; Discharge of Fines by Unpaid Work (Pilot Schemes) Order 2004, SI 2004/2198 (amended by SI 2005/563, SI 2005/617, SI 2006/502, SI 2007/773, SI 2008/621).

A register is to be kept, in accordance with regulations, of sums which are, for the purposes of the Magistrates' Courts Act 1980, sums adjudged to be paid by a conviction or order of a magistrates' court: see Courts Act 2003 s 98; and CIVIL PROCEDURE vol 12 (2009) PARA 1147.

SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to the enforcement of fines see Pt 52.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(iv) Fines and Compensation/A. PAYMENT AND ENFORCEMENT ON CONVICTION/853. Power to dispense with immediate payment.

### **853. Power to dispense with immediate payment.**

A magistrates' court<sup>1</sup> by whose conviction or order a sum is adjudged to be paid<sup>2</sup> may, instead of requiring immediate payment, allow time for payment, or order payment by instalments<sup>3</sup>. Where a magistrates' court orders that a sum adjudged to be paid by a conviction is to be paid by instalments, the court, on an application made by the person liable to pay that sum, has power to vary that order by varying the number of instalments payable, the amount of any instalment payable and the date on which any instalment becomes payable<sup>4</sup>. Where a magistrates' court allows time for payment of a sum adjudged to be paid by a conviction of the court or orders payment by instalments, it may on that or any subsequent occasion fix a day<sup>5</sup> on which, if the relevant condition<sup>6</sup> is satisfied, the offender must appear in person before the magistrates' court for either or both of the following purposes: (1) to enable an inquiry<sup>7</sup> into his means to be made<sup>8</sup>; or (2) to enable a hearing to be held<sup>9</sup> for the issue of a warrant of commitment<sup>10</sup> or the fixing of a term of imprisonment in default<sup>11</sup>. Where on the day fixed the relevant condition is satisfied<sup>12</sup>, and the offender fails to appear in person before the magistrates' court<sup>13</sup>, the court may issue a warrant to arrest<sup>14</sup> him and bring him before the court<sup>15</sup>.

<sup>1</sup> For the meaning of 'magistrates' court' see PARA 583 ante.

<sup>2</sup> As to the use of the term 'a sum adjudged to be paid by conviction or order of a magistrates' court' see PARA 675 note 23 ante.



3 Magistrates' Courts Act 1980 s 75(1). Where a magistrates' court has allowed time for payment, the court may, on application by or on behalf of the person liable to make the payment, allow further time or order payment by instalments: s 75(2). Where a magistrates' court has ordered payment by instalments and default is made in the payment of any one instalment, proceedings may be taken as if the default had been made in the payment of all the instalments then unpaid: s 75(3). As to applications for further time see the Magistrates' Courts Rules 1981, SI 1981/552, r 51 (amended by SI 1989/384; and SI 1991/1991).

4 Magistrates' Courts Act 1980 s 85A (added by the Criminal Justice Act 1982 s 51(1)).

5 The power to fix a day is exercisable only in the presence of the offender: Magistrates' Courts Act 1980 s 86(2). However, where a day has been fixed, the magistrates' court may fix a later day in substitution for the day previously fixed, and may do so when composed of a single justice and whether the offender is present or not: s 86(3).

6 Where the power which the magistrates' court has exercised is the power to allow time for payment of a sum, the relevant condition is satisfied if any part of that sum remains unpaid on the day fixed by the court: *ibid* s 86(1A) (s 86(1A), (1B) (added by the Criminal Justice Act 1982 s 51(2))). Where the power which the magistrates' court has exercised is the power to order payment by instalments, the relevant condition is satisfied if an instalment which has fallen due remains unpaid on the day fixed by the court: Magistrates' Courts Act 1980 s 86(1B) (as so added).

7 *Ie* under *ibid* s 82 (as amended) (restriction on power to impose imprisonment for default): see PARAS 854, 862 *post*.

8 *Ibid* s 86(1)(a) (s 86(1) substituted by the Criminal Justice Act 1982 s 51(2)).

9 *Ie* under the Magistrates' Courts Act 1980 s 82(5) (as amended): see PARA 862 *post*.

10 As to warrants of commitment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1162. As to the issue of warrants of commitment see PARA 860 *post*.

11 Magistrates' Courts Act 1980 s 86(1)(b) (as substituted: see note 8 *supra*).

12 *Ibid* s 86(4)(a) (substituted by the Criminal Justice Act 1982 s 51(2)).

13 Magistrates' Courts Act 1980 s 86(4)(b).

14 As to warrants of arrest see PARA 695 *et seq ante*.

15 Magistrates' Courts Act 1980 s 86(4). The provisions of s 83(3) relating to the process for securing attendance (see PARAS 863-864 *post*) apply in relation to warrants issued under s 86 (as amended): s 86(4) (amended by the Access to Justice Act 1999 s 97(3)). Where under the Magistrates' Courts Act 1980 s 86(3) (see note 5 *supra*) a later day has in the absence of the offender been fixed in substitution for a day previously fixed, the magistrates' court must not issue a warrant unless it is proved to the satisfaction of the court, on oath or in such other manner as may be prescribed, that notice in writing of the substituted day was served on the offender not less than what appears to the court to be a reasonable time before that day: s 86(5). Service of the notice of the substituted day may be effected in any manner in which service of a summons may be effected under the Magistrates' Courts Rules 1981, SI 1981/552, r 99(1) (see PARA 690 *ante*): see r 52.

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 852-877 Fines and Compensation

The Courts Act 2003 s 97, Sch 5 make provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings: see PARA 877A.

As to the mutual recognition of financial penalties see PARA 877B.

Provision is also made for the discharge of fines by means of unpaid work: see s 97, Sch 6; Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004, SI 2004/2196; Discharge of Fines by Unpaid Work (Issue of Summons) Regulations 2004, SI 2004/2197; Discharge of Fines by Unpaid Work (Pilot Schemes) Order 2004, SI 2004/2198 (amended by SI 2005/563, SI 2005/617, SI 2006/502, SI 2007/773, SI 2008/621).

A register is to be kept, in accordance with regulations, of sums which are, for the purposes of the Magistrates' Courts Act 1980, sums adjudged to be paid by a conviction or order of a magistrates' court: see Courts Act 2003 s 98; and CIVIL PROCEDURE VOL 12 (2009) PARA 1147.

SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to the enforcement of fines see Pt 52.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(iv) Fines and Compensation/A. PAYMENT AND ENFORCEMENT ON CONVICTION/854. Immediate imprisonment for default in payment of fine.

#### **854. Immediate imprisonment for default in payment of fine.**

A magistrates' court<sup>1</sup> may not on the occasion of convicting an offender of an offence issue a warrant of commitment<sup>2</sup> for default in paying a sum adjudged to be paid<sup>3</sup> unless: (1) in the case of an offence punishable with imprisonment<sup>4</sup>, he appears to the magistrates' court to have sufficient means to pay the sum forthwith<sup>5</sup>; (2) it appears to the magistrates' court that he is unlikely to remain long enough at a place of abode in the United Kingdom<sup>6</sup> to enable payment of the sum to be enforced by other methods<sup>7</sup>; or (3) on the occasion of that conviction the magistrates' court sentences him to immediate imprisonment or detention in a young offender institution<sup>8</sup> for that or another offence or he is already serving a sentence of custody for life, or a term of imprisonment or detention<sup>9</sup>. A magistrates' court must not, in advance of the issue of a warrant of commitment, fix a term of imprisonment which is to be served by an offender in the event of a default in paying a sum adjudged to be paid by a conviction, except where it has power to issue a warrant of commitment forthwith, but postpones<sup>10</sup> issuing the warrant<sup>11</sup>.

Where a magistrates' court on the occasion of convicting an offender of an offence issues a warrant of commitment for a default in paying a sum adjudged to be paid by the conviction or, having power to issue such a warrant, fixes a term of imprisonment<sup>12</sup>, the reasons for the court's action must be entered in the register<sup>13</sup> or any separate record kept for the purpose of recording particulars of fine enforcement<sup>14</sup>.

A magistrates' court has the power to detain an offender aged at least 18 but under 21 for default in payment of a fine<sup>15</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 As to warrants of commitment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1162. As to the issue of warrants of commitment see PARA 860 et seq post.

3 As to the use of the term 'a sum adjudged to be paid by conviction or order of a magistrates' court' see PARA 675 note 23 ante.

4 As to the use of the term 'punishable with imprisonment' see PARA 693 note 20 ante.

5 Magistrates' Courts Act 1980 s 82(1)(a). The Magistrates' Courts Act 1980 Pt III (ss 75-96A) (as amended) has effect in relation to a person aged 18 or over but less than 21 as if any reference to committing a person to

prison, or fixing a term of imprisonment for a default, were a reference to committing the person to, or, as the case may be, to fixing a term of, detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 108 (prospectively repealed) (see the text and note 15 *infra*); and any reference to warrants of commitment, or to periods of imprisonment imposed for default, are construed accordingly: Magistrates' Courts Act 1980 s 96A (added by the Criminal Justice Act 1982 s 77, Sch 14 para 54; and amended by the Criminal Justice Act 1991 s 68, Sch 8 para 6; and the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 70). As from a day to be appointed the Magistrates' Courts Act 1980 s 96A (as added and amended) is repealed: see the Criminal Justice and Court Services Act 2000 ss 74, 75, Sch 7 Pt II paras 58, 65, Sch 8.

6 For the meaning of 'United Kingdom' see PARA 528 note 3 *ante*.

7 Magistrates' Courts Act 1980 s 82(1)(b).

8 As to young offender institutions see PRISONS vol 36(2) (Reissue) PARAS 643-656.

9 Magistrates' Courts Act 1980 s 82(1)(c) (amended by the Criminal Justice Act 1982 s 77, Sch 14 para 52(b); and by virtue of the Criminal Justice Act 1988 s 123(6), Sch 8 paras 1, 2). The Magistrates' Courts Act 1980 s 82(1)(c) (as amended) refers to detention in a young offender institution for default or contempt under the Criminal Justice Act 1982 s 9 (repealed): see the Magistrates' Courts Act 1980 s 82(1)(c) (as so amended). However, as from a day to be appointed the reference in the Magistrates' Courts Act 1980 s 82(1)(c) (as amended) to the Criminal Justice Act 1982 s 9 (repealed) is repealed and replaced with a reference to the Powers of Criminal Courts (Sentencing) Act 2000 s 108 (prospectively repealed) (see the text and note 15 *infra*): see the Criminal Justice and Court Services Act 2000 s 74, Sch 7 Pt II paras 58, 63(b). At the date at which this volume states the law no such day had been appointed.

Where a magistrates' court issues a warrant of commitment on the ground that one of the conditions is satisfied, it must state that fact, specifying the ground, in the warrant: see the Magistrates' Courts Act 1980 s 82(6). For the form of warrant see the Magistrates' Courts (Forms) Rules 1981, SI 1981/552, r 2 (as amended), Sch 2 Form 51 (as substituted and amended). See PARA 505 note 12 *ante*.

10 *Ie* under the Magistrates' Courts Act 1980 s 77(2) (as amended): see PARA 860 *post*.

11 *Ibid* s 82(2).

12 *Ie* under *ibid* s 77(2) (as amended): see PARA 860 *post*.

13 As to the duty to keep the register see PARA 628 *ante*.

14 Magistrates' Courts Rules 1981, SI 1981/552, r 65(1). The following must be entered in the register:

92 (1) means inquiry under the Magistrates' Courts Act 1980 s 82 (as amended) (see PARA 862 *post*) (Magistrates' Courts Rules 1981, SI 1981/552, r 65(2)(a));

93 (2) hearing under the Magistrates' Courts Act 1980 s 82(5) (as amended) (see PARA 862 *post*) (Magistrates' Courts Rules 1981, SI 1981/552, r 65(2)(b));

94 (3) allowance of further time for the payment of a sum adjudged to be paid by a conviction (see PARA 853 *ante*) (r 65(2)(c));

95 (4) direction that such a sum is to be paid by instalments including any direction varying the number of instalments payable, the amount of any instalments payable and the date in which any instalment becomes payable (r 65(2)(d) (amended by SI 1983/523));

96 (5) distress for the enforcement of such a sum (Magistrates' Courts Rules 1981, SI 1981/552, r 65(1)(e));

97 (6) attachment of earnings order for the enforcement of such a sum (see PARA 837 *et seq ante*) (r 65(1)(f));

98 (7) decision of the Secretary of State to make deductions from income support under the Criminal Justice Act 1991 s 24 (as amended) (see PARA 877 *post*) (Magistrates' Courts Rules 1981, SI 1981/552, r 65(1)(ff) (added by SI 1992/2072));

99 (8) order under the Magistrates' Courts Act 1980 placing a person under supervision pending payment of such a sum (see PARA 874 *post*) (Magistrates' Courts Rules 1981, SI 1981/552, r 65(2)(g));

- 100 (9) order under the Magistrates' Courts Act 1980 s 85(1) (as substituted) (see PARA 862 post), remitting the whole or any part of a fine (Magistrates' Courts Rules 1981, SI 1981/552, r 65(2)(h));
- 101 (10) order under the Magistrates' Courts Act 1980 s 120(4) (forfeiture of recognisance) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 157), remitting the whole or any part of any sum enforceable under that provision (Magistrates' Courts Rules 1981, SI 1981/552, r 65(2)(i));
- 102 (11) authority granted under the Magistrates' Courts Act 1980 s 87(3) (as amended) (see PARA 869 post), authorising the taking of proceedings in the High Court or county court for the recovery of any sum adjudged to be paid by a conviction (Magistrates' Courts Rules 1981, SI 1981/552, r 65(2)(j));
- 103 (12) transfer of fine order made by the court (see PARA 856 post) (r 65(2)(k));
- 104 (13) order transferring a fine to the court (see PARA 856 post) (r 65(2)(l)); and
- 105 (14) order under the Powers of Criminal Courts (Sentencing) Act 2000 s 140(1) (see PARA 852 ante) specifying the court for the purpose of enforcing a fine imposed or recognisance forfeited by the Crown Court (Magistrates' Courts Rules 1981, SI 1981/552, r 65(2)(m); Powers of Criminal Courts (Sentencing) Act 2000 s 165, Sch 11 para 1(4), (5));
- 106 (15) any fine imposed or recognisance forfeited by a coroner which has to be treated as imposed or forfeited by the court (see PARA 855 post) (Magistrates' Courts Rules 1981, SI 1981/552, r 65(2)(n));
- 107 (16) reference by a justice of the peace of an application under the Magistrates' Courts Act 1980 s 77(5) (as added) (see PARA 860 ante) for a review of the terms on which a warrant of commitment is postponed (Magistrates' Courts Rules 1981, SI 1981/552, r 65(2)(o) (added by SI 1988/2132));
- 108 (17) order under the Magistrates' Courts Act 1980 s 77(3) (as added) (see PARA 860 post) varying the time for which or the conditions subject to which a warrant of commitment is postponed (Magistrates' Courts Rules 1981, SI 1981/552, r 65(2)(p) (added by SI 1988/2132)).

For the meaning of 'Crown Court' see PARA 508 note 9 ante. As to the Secretary of State see PARA 530 note 8 ante.

15 See the Powers of Criminal Courts (Sentencing) Act 2000 s 108; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 11. As from a day to be appointed s 108 is repealed: see the Criminal Justice and Court Services Act 2000 Sch 7 Pt II paras 160, 188, Sch 8. At the date at which this volume states the law no such day had been appointed.

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 852-877 Fines and Compensation

The Courts Act 2003 s 97, Sch 5 make provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings: see PARA 877A.

As to the mutual recognition of financial penalties see PARA 877B.

Provision is also made for the discharge of fines by means of unpaid work: see s 97, Sch 6; Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004, SI 2004/2196; Discharge of Fines by Unpaid Work (Issue of Summons) Regulations 2004, SI 2004/2197; Discharge of Fines by Unpaid Work (Pilot Schemes) Order 2004, SI 2004/2198 (amended by SI 2005/563, SI 2005/617, SI 2006/502, SI 2007/773, SI 2008/621).

A register is to be kept, in accordance with regulations, of sums which are, for the purposes of the Magistrates' Courts Act 1980, sums adjudged to be paid by a conviction or order of a magistrates' court: see Courts Act 2003 s 98; and CIVIL PROCEDURE vol 12 (2009) PARA 1147.

SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to the enforcement of fines see Pt 52.

## **854 Immediate imprisonment for default in payment of fine**

NOTE 9--SI 1981/553 Sch 2 Form 51 revoked: SI 2003/1236.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(iv) Fines and Compensation/A. PAYMENT AND ENFORCEMENT ON CONVICTION/855. Notice of fine to offender.

### **855. Notice of fine to offender.**

Where a magistrates' court<sup>1</sup> is required to enforce payment of a fine<sup>2</sup> imposed or recognisance forfeited by the Crown Court<sup>3</sup> or by a coroner<sup>4</sup>, or where a magistrates' court allows time for payment of a sum adjudged to be paid by a summary conviction<sup>5</sup>, or directs that the sum be paid by instalments<sup>6</sup>, or where the offender is absent when a sum is adjudged to be paid by a summary conviction, the justices' chief executive<sup>7</sup> for the court must serve on the offender notice in writing stating the amount of that sum and, if it is to be paid by instalments, the amount of the instalments, the date on which the sum, or each of the instalments, is required to be paid and the place or places and times at which payment may be made<sup>8</sup>. The notice is served on the offender by delivering it to him or by sending it to him by post in a letter addressed to him at his last known or usual place of abode<sup>9</sup>. No warrant of distress or commitment may be issued<sup>10</sup> until after such notice has been served<sup>11</sup>. The justices' chief executive for a magistrates' court receiving a financial penalty enforcement order<sup>12</sup> made by the Defence Council<sup>13</sup> must cause the order to be registered and must serve on the person against whom the order was made a notice of registration<sup>14</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 As to the meaning of 'fine' see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 139.

3 For the meaning of 'Crown Court' see PARA 508 note 9 ante.

4 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 140 (prospectively amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 11) or the Criminal Justice Act 1988 s 67(2): see the Magistrates' Courts Rules 1981, SI 1981/552, r 46(1); the Interpretation Act 1978 s 17(2)(a); and the Powers of Criminal Courts (Sentencing) Act 2000 s 165, Sch 11 para 1(4), (5).

5 As to the use of the term 'a sum adjudged to be paid by conviction or order of a magistrates' court' see PARA 675 note 23 ante.

6 As to the time for payment and payment by instalments see PARA 853 ante.

7 As to the justices' chief executive see PARA 624 et seq ante.

8 Magistrates' Courts Rules 1981, SI 1981/552, r 46(1). Compliance with what is now the Magistrates' Courts Rules 1981, SI 1981/552, r 46(1) is mandatory even where the offender is in court on a means inquiry: *R v Farnham Justices, ex p Hunt* (1976) 140 JP Jo 453. For the form of notice see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Form 46 (as amended). See PARA 505 note 12 ante.

9 Magistrates' Courts Rules 1981, SI 1981/552, r 46(2).

10 As to warrants of commitment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1162; and as to warrants of distress see DISTRESS vol 13 (2007 Reissue) PARA 1134 et seq. As to the issue of warrants of distress and commitment see PARA 860 post.

11 Magistrates' Courts Rules 1981, SI 1981/552, r 46(1).

12 In an order made under the Army Act 1955 s 133A(1) (as added and amended), the Air Force Act 1955 s 133A(1) (as added and amended) or the Naval Discipline Act 1957 s 128F(1) (as added and amended).

13 As to the Defence Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 443 et seq.

14 See the Magistrates' Courts Rules 1981, SI 1981/552, r 47 (amended by SI 2001/610). For the form of notice see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Form 47 (as amended).

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 852-877 Fines and Compensation

The Courts Act 2003 s 97, Sch 5 make provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings: see PARA 877A.

As to the mutual recognition of financial penalties see PARA 877B.

Provision is also made for the discharge of fines by means of unpaid work: see s 97, Sch 6; Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004, SI 2004/2196; Discharge of Fines by Unpaid Work (Issue of Summons) Regulations 2004, SI 2004/2197; Discharge of Fines by Unpaid Work (Pilot Schemes) Order 2004, SI 2004/2198 (amended by SI 2005/563, SI 2005/617, SI 2006/502, SI 2007/773, SI 2008/621).

A register is to be kept, in accordance with regulations, of sums which are, for the purposes of the Magistrates' Courts Act 1980, sums adjudged to be paid by a conviction or order of a magistrates' court: see Courts Act 2003 s 98; and CIVIL PROCEDURE vol 12 (2009) PARA 1147.

SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to the enforcement of fines see Pt 52.

### 855 Notice of fine to offender

NOTES 8, 14--SI 1981/553 Sch 2 Forms 46, 47 revoked: SI 2003/1236.

NOTE 14--SI 1981/552 r 47 further amended: SI 2009/2054.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(iv) Fines and Compensation/A. PAYMENT AND ENFORCEMENT ON CONVICTION/856. Transfer of fines.

## 856. Transfer of fines.

Where a magistrates' court<sup>1</sup> has, or is treated by any enactment<sup>2</sup> as having, adjudged a person by a conviction to pay a sum<sup>3</sup>, and it appears to the court that the person is residing in some other petty sessions area<sup>4</sup>, the court may make a transfer of fine order, that is to say, an order making payment enforceable in the petty sessions area in which it appears to the court that he is residing<sup>5</sup>. As from the date on which a transfer of fine order is made with respect to any sum, all functions<sup>6</sup> relating to that sum which, if no such order had been made, would have been exercisable by the court which made the order, or the justices' chief executive for that court, are exercisable by a court acting for the petty sessions area specified in the order, or the justices' chief executive for that court, as the case may be, and not otherwise<sup>7</sup>. Where it appears to a magistrates' court by which functions in relation to any sum are for the time being exercisable by virtue of a transfer of fine order that the person liable to pay the sum is residing in a petty sessions area other than that for which the court is acting, the court may make a further transfer of fine order with respect to that sum<sup>8</sup>. Payments received by the justices' chief executive for the convicting court after the making of a transfer of fine order are to be paid by him to the justices' chief executive for the other court<sup>9</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 As to the meaning of 'enactment' see PARA 505 note 16 ante. See eg the Administration of Justice Act 1970 s 41(1) (see PARA 878 post; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2100).

3 As to the use of the term 'a sum adjudged to be paid by conviction or order of a magistrates' court' see PARA 675 note 23 ante.

4 As to petty sessions see PARA 591 et seq ante.

5 Magistrates' Courts Act 1980 s 89(1). The area must be specified in the order: s 89(1). The justices' chief executive for a magistrates' court which has made a transfer of fine order under must send to the clerk of the court having jurisdiction under the order a copy of the order: see the Magistrates' Courts Rules 1981, SI 1981/552, r 57(1) (amended by SI 1993/1183; and SI 2001/610). Where a magistrates' court has made a transfer of fine order in respect of a sum adjudged to be paid by a court in Scotland or in Northern Ireland the justices' chief executive for the magistrates' court must send a copy of the order to the clerk of the Scottish court or to the clerk of the Northern Irish court, as the case may be: Magistrates' Courts Rules 1981, SI 1981/552, r 57(2) (amended by SI 2001/610). Where the justices' chief executive for a magistrates' court receives a copy of a transfer of fine order (whether made in England and Wales, or in Scotland or in Northern Ireland) specifying that court as the court by which payment of the sum in question is to be enforceable, he must, if possible, deliver or send by post to the offender notice in writing in the prescribed form: Magistrates' Courts Rules 1981, SI 1981/552, r 57(3) (amended by SI 2001/610). Where under a transfer of fine order a sum adjudged to be paid by a Scottish court or by a Northern Irish court is enforceable by a magistrates' court: (1) if the sum is paid, the justices' chief executive for the magistrates' court must send it to the clerk of the Scottish court or to the clerk of the Northern Irish court, as the case may be; (2) if the sum is not paid, the justices' chief executive for the magistrates' court must inform the clerk of the Scottish court or the clerk of the Northern Irish court, as the case may be, of the manner in which the adjudication has been satisfied or that the sum, or any balance thereof, appears to be irrecoverable: Magistrates' Courts Rules 1981, SI 1981/552, r 57(4) (amended by SI 2001/610).

For the form of order see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Forms 59, 61 (both as amended). See PARA 505 note 12 ante. The order may be made by a single justice or by a justices' clerk: see the Justices' Clerks Rules 1999, SI 1999/2784, r 2, Schedule para 32. No fee is chargeable for the order or notice: Magistrates' Courts Act 1980 s 137(2), Sch 6 Pt II para 1. For the meaning of 'England' see PARA 501 note 7 ante; and for the meaning of 'Wales' see PARA 501 note 7 ante. As to justices' clerks see PARA 631 et seq ante. As to the justices' chief executive see PARA 624 et seq ante.

6 Ie under the Magistrates' Courts Act 1980 Pt III (ss 74-96A) (as amended). However, for these purposes, references to Pt III (as amended) do not include references to s 81(1) (as amended) (enforcement of fines imposed on young offenders) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 383): s 89(4).

7 Ibid s 89(2) (amended by the Access to Justice Act 1999 s 90(1), Sch 13 paras 95, 107). The functions of the court to which the Magistrates' Courts Act 1980 s 89(2) (as amended) relates are deemed to include the court's power to apply to the Secretary of State under any regulations made by him under the Criminal Justice Act 1991 s 24(1)(a) (as amended) (power to deduct fines etc from income support) (see PARA 877 post):

Magistrates' Courts Act 1980 s 89(2A) (added by the Criminal Justice and Public Order Act 1994 s 47(1)). As to the Secretary of State see PARA 530 note 8 ante.

8 Magistrates' Courts Act 1980 s 89(3).

9 See the Magistrates' Courts Rules 1981, SI 1981/552, r 48(3) (amended by SI 2001/610).

## **UPDATE**

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### **852-877 Fines and Compensation**

The Courts Act 2003 s 97, Sch 5 make provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings: see PARA 877A.

As to the mutual recognition of financial penalties see PARA 877B.

Provision is also made for the discharge of fines by means of unpaid work: see s 97, Sch 6; Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004, SI 2004/2196; Discharge of Fines by Unpaid Work (Issue of Summons) Regulations 2004, SI 2004/2197; Discharge of Fines by Unpaid Work (Pilot Schemes) Order 2004, SI 2004/2198 (amended by SI 2005/563, SI 2005/617, SI 2006/502, SI 2007/773, SI 2008/621).

A register is to be kept, in accordance with regulations, of sums which are, for the purposes of the Magistrates' Courts Act 1980, sums adjudged to be paid by a conviction or order of a magistrates' court: see Courts Act 2003 s 98; and CIVIL PROCEDURE vol 12 (2009) PARA 1147.

SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to the enforcement of fines see Pt 52.

### **856 Transfer of fines**

TEXT AND NOTES--References to justices' chief executive are now to designated officer and reference to petty sessions area is now to local justice area: Magistrates' Courts Act 1980 s 89(1) (amended by the Courts Act 2003 Sch 8 para 225). 1980 Act s 89(1), (2A), (3) amended, s 89(2) substituted: SI 2006/1737.

NOTE 5--SI 1981/553 Sch 2 Forms 59, 61 revoked: SI 2003/1236. SI 1999/2784, r 2, Schedule para 32 now Justices' Clerks Rules 2005, SI 2005/545, r 2, Schedule para 32. 1980 Act s 137, Sch 6 repealed: 2003 Act Sch 8 para 242, Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(iv) Fines and Compensation/A. PAYMENT AND ENFORCEMENT ON CONVICTION/857. Transfer of fines to Scotland or Northern Ireland.

### **857. Transfer of fines to Scotland or Northern Ireland.**



Where a magistrates' court<sup>1</sup> has, or is treated by any enactment<sup>2</sup> as having, adjudged a person by a conviction to pay a sum<sup>3</sup>, and it appears to the court that he is residing within the jurisdiction of a court of summary jurisdiction in Scotland<sup>4</sup>, or in any petty sessions district in Northern Ireland<sup>5</sup>, the court may order that payment of the sum is enforceable by that court of summary jurisdiction or, as the case may be, in that petty sessions district<sup>6</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 For the meaning of 'enactment' see PARA 505 note 16 ante.

3 As to the use of the term 'a sum adjudged to be paid by conviction or order of a magistrates' court' see PARA 675 note 23 ante.

4 Magistrates' Courts Act 1980 s 90(1)(a).

5 Ibid s 90(1)(b).

6 Ibid s 90(1). A transfer order under s 90 (as amended) must specify the court of summary jurisdiction by which or petty sessions district in which payment of the sum in question is to be enforceable: s 90(2). If that sum is more than £100 or is a fine originally imposed by the Crown Court or the sheriff court, and payment is to be enforceable in Scotland, the specified court must be the sheriff court: s 90(2). Where a transfer order is made with respect to any sum, any functions under Pt III (ss 74-96A, but not including for these purposes s 81(1)) (as amended) relating to that sum which, if no transfer order had been made, would have been exercisable by the court which made the order or by the justices' chief executive for that court cease to be so exercisable: ss 89(4), 90(3) (amended by the Access to Justice Act 1999 s 90(1), Sch 13 paras 95, 108). The functions of the court which cease to be exercisable by virtue of the Magistrates' Courts Act 1980 s 90(3) (as amended) are deemed to include the court's power to apply to the Secretary of State under regulations made by him under the Criminal Justice Act 1991 s 24(1)(a) (as amended) (power to deduct fines etc from income support) (see PARA 877 post): s 90(3A) (added by the Criminal Justice and Public Order Act 1994 s 47(2)). As to the procedure on the transfer see the Magistrates' Courts Rules 1981, SI 1981/552, r 57 (as amended); and PARA 856 ante. For the form of transfer see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Form 60 (as amended). For the meaning of 'Crown Court' see PARA 508 note 9 ante. As to the meaning of 'fine' see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 139 et seq. As to the justices' chief executive see PARA 624 et seq ante. As to the Secretary of State see PARA 530 note 8 ante.

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 852-877 Fines and Compensation

The Courts Act 2003 s 97, Sch 5 make provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings: see PARA 877A.

As to the mutual recognition of financial penalties see PARA 877B.

Provision is also made for the discharge of fines by means of unpaid work: see s 97, Sch 6; Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004, SI 2004/2196; Discharge of Fines by Unpaid Work (Issue of Summons) Regulations 2004, SI 2004/2197; Discharge of Fines by Unpaid Work (Pilot Schemes) Order 2004, SI 2004/2198 (amended by SI 2005/563, SI 2005/617, SI 2006/502, SI 2007/773, SI 2008/621).

A register is to be kept, in accordance with regulations, of sums which are, for the purposes of the Magistrates' Courts Act 1980, sums adjudged to be paid by a conviction or order of a magistrates' court: see Courts Act 2003 s 98; and CIVIL PROCEDURE vol 12 (2009) PARA 1147.

SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to the enforcement of fines see Pt 52.

### **857 Transfer of fines to Scotland or Northern Ireland**

TEXT AND NOTES--1980 Act s 90(1), (3), (3A) amended: SI 2006/1737.

As to the modification of the Magistrates' Courts Act 1980 s 90 in its application to financial penalties by virtue of the Criminal Justice and Immigration Act 2008 s 85 (see PARA 877B.2) see Criminal Justice and Immigration Act 2008 s 86.

See also Criminal Justice and Immigration Act 2008 s 90 (transfer of certificates to central authority for Scotland).

NOTE 6--SI 1981/553 Sch 2 Form 60 revoked: SI 2003/1236.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(iv) Fines and Compensation/A. PAYMENT AND ENFORCEMENT ON CONVICTION/858. Transfers of fines from Scotland or Northern Ireland.

### **858. Transfers of fines from Scotland or Northern Ireland.**

Where a transfer of fine order under the Criminal Procedure (Scotland) Act 1975<sup>1</sup> or the Magistrates' Courts (Northern Ireland) Order 1981<sup>2</sup> provides that payment of a sum is enforceable in a specified petty sessions area<sup>3</sup> in England<sup>4</sup> and Wales<sup>5</sup>, a magistrates' court<sup>6</sup> acting for that area, and the justices' chief executive<sup>7</sup> for that court, has all the like functions under the Magistrates' Courts Act 1980<sup>8</sup> in respect of the sum<sup>9</sup> as if the sum were a sum adjudged to be paid by a conviction of that court and as if any order made<sup>10</sup> in respect of the sum before the making of the transfer of fine order had been made by that court<sup>11</sup>.

1    Ie under the Criminal Procedure (Scotland) Act 1975 s 403 (as amended).

2    Ie under the Magistrates' Courts (Northern Ireland) Order 1981, SI 1981/1675 (NI 26), art 95.

3    As to petty sessions see PARA 591 et seq ante.

4    For the meaning of 'England' see PARA 501 note 7 ante.

5    For the meaning of 'Wales' see PARA 501 note 7 ante.

6    For the meaning of 'magistrates' court' see PARA 583 ante.

7    As to the justices' chief executive see PARA 624 et seq ante.

8    Ie under the Magistrates' Courts Act 1980 Pt III (ss 74-96A) (as amended). However, for these purposes, references to Pt III (as amended) do not include references to s 81(1) (as amended) (enforcement of fines imposed on young offenders) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 383): s 89(4).

9    Ie including power to make an order under ibid s 89 (as amended) (see PARA 856 ante) or s 90 (as amended) (see PARA 857 ante).

10   Ie under the Criminal Procedure (Scotland) Act 1975 or, as the case may be, the Magistrates' Courts (Northern Ireland) Order 1981, SI 1981/1675 (NI 26) (as amended).

11   Magistrates' Courts Act 1980 s 91(1) (amended by the Access to Justice Act 1999 s 90(1), Sch 13 paras 95, 109; and the Magistrates' Courts (Northern Ireland) Order 1981, SI 1981/1675, art 170(2), Sch 6 Pt I). For the purpose of determining the period of imprisonment which may be imposed under the Magistrates' Courts

Act 1980 in default of payment of a fine originally imposed by a court in Scotland, Sch 4 (as amended) has effect as if for the table set out in PARA 1 (as amended) (see PARA 865 post) there were substituted the table set out in the Criminal Procedure (Scotland) Act 1975 s 407 (as amended): Magistrates' Courts Act 1980 s 91(2). Where a transfer of fine order under the Criminal Procedure (Scotland) Act 1975 s 403 (as amended) or the Magistrates' Courts (Northern Ireland) Order 1981, SI 1981/1675 (NI 26), art 95 provides for the enforcement in a petty sessions area in England and Wales of a fine originally imposed by the Crown Court, a magistrates' court acting for that area has all the like functions under the Magistrates' Courts Act 1980 Pt III (as amended), exercisable subject to the like restrictions, as if it were the magistrates' court by which payment of the fine fell to be enforced by virtue of the Powers of Criminal Courts (Sentencing) Act 2000 s 140(1) (see PARA 852 ante), and as if any order made under the Criminal Procedure (Scotland) Act 1975 or, as the case may be, the Magistrates' Courts (Northern Ireland) Order 1981, SI 1981/1675 (NI 26) (as amended) in respect of the fine before the making of the transfer of fine order had been made by that court: Magistrates' Courts Act 1980 s 91(3) (amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 69; and the Magistrates' Courts (Northern Ireland) Order 1981, SI 1981/1675, Sch 6 Pt I). As to the procedure on the transfer see the Magistrates' Courts Rules 1981, SI 1981/552, r 57 (as amended); and PARA 856 ante. For the meaning of 'Crown Court' see PARA 508 note 9 ante. As to the meaning of 'fine' see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 139 et seq.

## **UPDATE**

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### **852-877 Fines and Compensation**

The Courts Act 2003 s 97, Sch 5 make provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings: see PARA 877A.

As to the mutual recognition of financial penalties see PARA 877B.

Provision is also made for the discharge of fines by means of unpaid work: see s 97, Sch 6; Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004, SI 2004/2196; Discharge of Fines by Unpaid Work (Issue of Summons) Regulations 2004, SI 2004/2197; Discharge of Fines by Unpaid Work (Pilot Schemes) Order 2004, SI 2004/2198 (amended by SI 2005/563, SI 2005/617, SI 2006/502, SI 2007/773, SI 2008/621).

A register is to be kept, in accordance with regulations, of sums which are, for the purposes of the Magistrates' Courts Act 1980, sums adjudged to be paid by a conviction or order of a magistrates' court: see Courts Act 2003 s 98; and CIVIL PROCEDURE vol 12 (2009) PARA 1147.

SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to the enforcement of fines see Pt 52.

### **858 Transfers of fines from Scotland or Northern Ireland**

TEXT AND NOTES 3-8--References to specified petty sessions area is now to magistrates' court in the area in which the person subject to the order resides and reference to justices' chief executive is now to designated officer: Magistrates' Courts Act 1980 s 91(1), (3) (amended by the Courts Act 2003 Sch 8 para 227). 1980 Act s 91(1), (3) further amended: SI 2006/1737.

Compensation/A. PAYMENT AND ENFORCEMENT ON CONVICTION/859. Payment of fine from money found on defaulter.

### **859. Payment of fine from money found on defaulter.**

Where a magistrates' court<sup>1</sup> has adjudged a person to pay a sum by a conviction, the court may order him to be searched<sup>2</sup>. Any money found on the arrest of a person adjudged to pay such a sum, or on a search or on his being taken to a prison or other place of detention in default of payment of such a sum or for want of sufficient distress to satisfy such a sum, may, unless the magistrates' court otherwise directs, be applied towards payment of the sum<sup>3</sup>. The balance, if any, must be returned to him<sup>4</sup>. A magistrates' court must not allow the application of any money found on a person if it is satisfied that the money does not belong to him or that the loss of the money would be more injurious to his family than would be his detention<sup>5</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 See the Magistrates' Courts Act 1980 s 80(1) (amended by the Family Law Reform Act 1987 s 33(1), Sch 2 para 83).

3 Magistrates' Courts Act 1980 s 80(2). Where the defaulter is committed to, or ordered to be detained in, a prison or other place of detention, any direction given under s 80(2) is indorsed on the warrant of commitment: Magistrates' Courts Rules 1981, SI 1981/552, r 64. As to warrants of commitment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1162.

4 Magistrates' Courts Act 1980 s 80(2).

5 Ibid s 80(3).

## **UPDATE**

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### **852-877 Fines and Compensation**

The Courts Act 2003 s 97, Sch 5 make provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings: see PARA 877A.

As to the mutual recognition of financial penalties see PARA 877B.

Provision is also made for the discharge of fines by means of unpaid work: see s 97, Sch 6; Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004, SI 2004/2196; Discharge of Fines by Unpaid Work (Issue of Summons) Regulations 2004, SI 2004/2197; Discharge of Fines by Unpaid Work (Pilot Schemes) Order 2004, SI 2004/2198 (amended by SI 2005/563, SI 2005/617, SI 2006/502, SI 2007/773, SI 2008/621).

A register is to be kept, in accordance with regulations, of sums which are, for the purposes of the Magistrates' Courts Act 1980, sums adjudged to be paid by a conviction or order of a magistrates' court: see Courts Act 2003 s 98; and CIVIL PROCEDURE vol 12 (2009) PARA 1147.

SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to the enforcement of fines see Pt 52.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(iv) Fines and Compensation/B. ENFORCEMENT SUBSEQUENT TO CONVICTION/(A) Distress, Imprisonment or Detention in Default/860. Issue of warrants of distress and commitment.

## ***B. ENFORCEMENT SUBSEQUENT TO CONVICTION***

### **(A) DISTRESS, IMPRISONMENT OR DETENTION IN DEFAULT**

#### **860. Issue of warrants of distress and commitment.**

Where default is made in paying a sum adjudged to be paid by a conviction or order<sup>1</sup> of a magistrates' court<sup>2</sup>, the court may issue a warrant of distress<sup>3</sup> for the purpose of levying the sum or issue a warrant committing<sup>4</sup> the defaulter to prison<sup>5</sup>. A warrant of commitment may be issued either where it appears on the return to a warrant of distress that the money and goods of the defaulter are insufficient to satisfy the sum with the costs and charges of levying the sum<sup>6</sup>, or may be issued instead of a warrant of distress<sup>7</sup>.

A magistrates' court which has power to issue a warrant of distress may, if it thinks it expedient to do so postpone the issue until such time and on such conditions, if any, as it thinks just<sup>8</sup>. Where a magistrates' court has power to issue a warrant of commitment it may, if it thinks it expedient to do so, fix a term of imprisonment or detention<sup>9</sup> and postpone the issue of the warrant until such time and on such conditions, if any, as the court thinks just<sup>10</sup>.

A magistrates' court has power at any time to do either or both of the following, if it thinks it just to do so having regard to a change of circumstances since the relevant time<sup>11</sup>: (1) to direct that the issue of the warrant of commitment is postponed until a time different from that to which it was previously postponed<sup>12</sup>; (2) to vary any of the conditions on which its issue is postponed<sup>13</sup>. If on an application by a person in respect of whom issue of a warrant has been postponed it appears to a justice of the peace acting for the petty sessions area<sup>14</sup> in which the warrant has been or would have been issued that since the relevant time there has been a change of circumstances which would make it just for the magistrates' court to exercise one or other or both of the powers so conferred, he must refer the application to the court<sup>15</sup>. Where such an application is referred to the magistrates' court the clerk<sup>16</sup> of the court must fix a time and place for the application to be heard, and the justices' chief executive<sup>17</sup> for the court must give the applicant notice of that time and place<sup>18</sup>.

Except where signature by the clerk of a magistrates' court is permitted<sup>19</sup>, every warrant under the Magistrates' Courts Act 1980 must be signed by the justice who issued it<sup>20</sup>. A warrant does not cease to have effect by reason of the death of the justice who signed it or his ceasing to be a justice<sup>21</sup>.

A warrant of distress issued for the purpose of levying a sum adjudged to be paid by the conviction or order of a magistrates' court must not, if it states that the sum has been so adjudged to be paid, be held void by reason of any defect in the warrant<sup>22</sup>. A person acting under a warrant of distress is not deemed to be a trespasser<sup>23</sup> from the beginning by reason only of any irregularity in the execution of the warrant<sup>24</sup>. Nothing in these provisions<sup>25</sup> prejudices the claim of any person for special damages in respect of any loss caused by a defect in the warrant or irregularity in its execution<sup>26</sup>.

1 As to the use of the term 'a sum adjudged to be paid by conviction or order of a magistrates' court' see PARA 675 note 23 ante.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 As to warrants of distress see DISTRESS vol 13 (2007 Reissue) PARA 1134 et seq. As to the execution of warrants of distress see the Magistrates' Courts Rules 1981, SI 1981/552, r 54 (amended by SI 1990/1190; SI 1999/2765; SI 2001/167; SI 2001/610); and PARA 861 post.

4 As to warrants of commitment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1162. A justice of the peace must not commit any person to a prison, young offender institution or a remand centre except by warrant of commitment: Magistrates' Courts Rules 1981, SI 1981/552, r 94 (amended by SI 1988/2132). As to the execution of warrants of commitment see the Magistrates' Courts Rules 1981, SI 1981/552, r 97 (amended by SI 1988/2132; SI 1990/1190; and SI 2001/167); and PARA 861 post. For the form of warrant see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Form 52 (as substituted and amended). See PARA 505 note 12 ante.

Where magistrates issue a warrant of commitment for non-payment of a fine in the case of an offender who is under 21, they are obliged to give in addition to the usual conditions under the Magistrates' Courts Act 1980 s 82(4) (see PARA 862 post), first the grounds on which they are satisfied that it is undesirable or impracticable to make a money payment supervision order, and secondly, their reasons for believing that no other method of dealing with the offender is appropriate: *R v Stockport Justices, ex p Conlon*; *R v Newark and Southwell Justices, ex p Keenaghan* [1997] 2 All ER 20.

5 Magistrates' Courts Act 1980 s 76(1) (amended by the Criminal Justice Act 1982 s 78, Sch 16) (which is expressed to be subject to the Magistrates' Courts Act 1980 Pt III (ss 76-96A) (as amended), and to s 132 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 31): s 76(1)). A magistrates' court must not exercise its power under s 76 (as amended) to issue a warrant to commit to prison a person who makes default in paying a sum adjudged to be paid by an order of a magistrates' court except where the default is under: (1) a magistrates' court maintenance order; (2) an order under the Access to Justice Act 1999 s 17(2) (payment by individual in respect of cost of his defence in a criminal case) (see LEGAL AID vol 65 (2008) PARA 174); or (3) an order for the payment of any of the taxes, contributions, premiums or liabilities specified in the Administration of Justice Act 1970 s 11, Sch 4 (as amended): Magistrates' Courts Act 1980 s 92(1) (amended by the Access to Justice Act 1999 s 24, Sch 4 paras 15, 17). The Magistrates' Courts Act 1980 s 92 (as amended) does not affect the power of a magistrates' court to issue a warrant in the case of default in paying a sum adjudged to be paid by a conviction, or treated (by any enactment relating to the collection or enforcement of fines, costs, compensation or forfeited recognisances) as so adjudged to be paid: s 92(2). For the meaning of 'magistrates' court maintenance order' see PARA 823 note 16 ante. As to the meaning of 'maintenance order' see PARA 820 note 3 ante. As to recognisances see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq.

The warrant may be issued by any magistrates' court acting for the same petty sessions area as the court which convicted or made the order: s 148(2). As to the maximum periods of imprisonment in default of payment see: s 76(3), Sch 4 (as amended); and PARA 865 post. A prisoner is not in any case liable to pay the cost of his conveyance to prison: Prison Act 1952 s 21.

The Magistrates' Courts Act 1980 Pt III (ss 75-96A) (as amended) has effect in relation to a person aged 18 or over but less than 21 as if any reference to committing a person to prison, or fixing a term of imprisonment for a default, were a reference to committing the person to, or, as the case may be, to fixing a term of, detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 108 (prospectively repealed) (see PARA 854 ante; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 11) and any reference to warrants of commitment, or to periods of imprisonment imposed for default, are construed accordingly: Magistrates' Courts Act 1980 s 96A (added by the Criminal Justice Act 1982 s 77, Sch 14 para 54; and amended by the Criminal Justice Act 1991 s 68, Sch 8 para 6; and the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 70). As from a day to be appointed the Magistrates' Courts Act 1980 s 96A (as added and amended) is repealed: see the Criminal Justice and Court Services Act 2000 ss 74, 75, Sch 7 Pt II paras 58, 65, Sch 8.

The justices should issue a warrant of distress rather than commit to prison where, on the evidence, it is reasonably likely that the defaulter has sufficient assets: *R v Birmingham Justices, ex p Bennett* [1983] 1 WLR 114, DC. See also *R v Clacton Justices, ex p Customs and Excise Comrs* (1987) 152 JP 129, DC (prosecution holding assets belonging to defendant). No order for committal may be made for a failure to pay a fine or costs imposed by a magistrates' court in the expectation that it will be paid by a third party, even where the third party is a discretionary trust under the control of the plaintiff's family: *R v Barnet Magistrates' Court, ex p Cantor* [1998] 2 All ER 333, [1999] 1 WLR 334, DC.

Where a warrant is issued by a justice of the peace for any petty sessions area at a time when the office of the justices' chief executive for that area is closed, the applicant for the warrant must within 72 hours serve upon the justices' chief executive any information on which the warrant was issued: Magistrates' Courts Rules 1981, SI 1981/552, r 95A (added by SI 1993/1183; and amended by SI 2001/610).

The magistrates' court may make an attachment of earnings order for the enforcement of a maintenance order instead of dealing with the case under s 76 (as amended): see the Attachment of Earnings Act 1971 s 3(4)(b) (as amended); and PARA 839 ante.

6 Magistrates' Courts Act 1980 s 76(2)(a).

7 Ibid s 76(2)(b). As to the restrictions on the imposition of imprisonment for default in paying the sum adjudged see PARAS 854 ante, 862 post.

8 Ibid s 77(1). However, once a distress warrant has been issued, the justices have no further power to suspend the operation of the warrant (*Crossland v Crossland* [1992] 2 FCR 45) nor to cancel a distress warrant (*R v Hereford and Worcester Magistrates' Court, ex p MacRae* (1998) 163 JP 433, DC). Cf *R v Sheffield City Justices, ex p Foster* (1999) Times, 2 November, DC (wide powers of review under the Magistrates' Courts Act 1980 s 142 (as amended) (see PARA 762 ante) include the power to recall warrant of overnight detention for non-payment of a fine).

9 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 108 (prospectively repealed) (detention of persons aged 18-20 for default): see PARA 854 ante; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 11.

10 Magistrates' Courts Act 1980 s 77(2) (amended by the Criminal Justice Act 1982 s 77, Sch 14 para 50; and the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 66(a),(b)). As from a day to be appointed the reference in the Magistrates' Courts Act 1980 s 77(2) (as amended) to detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 108 (prospectively repealed) is repealed: see the Criminal Justice and Court Services Act 2000 ss 74, 75, Sch 7 Pt II paras 58, 62, Sch 8. At the date at which this volume states the law no such day had been appointed.

Where a defendant explains his failure to comply with the conditions of postponement to the court office, that information must be passed on to the court: *R v Newport Pagnell Justices, ex p Smith* (1988) 152 JP 475, DC.

As to the review of the terms of postponement of a warrant of commitment see the Magistrates' Courts Rules 1981, SI 1981/552, r 52A (added by SI 1988/2132).

11 Magistrates' Courts Act 1980 s 77(3) (s 77(3)-(8) added by the Criminal Justice Act 1988 s 61(1), (2)). For these purposes, 'the relevant time' means: (1) where neither of the powers conferred by s 77(3) (as added) has been exercised previously, the date when the issue of the warrant was postponed under s 77(2) (see the text and notes 9-10 supra); and (2) in any other case, the date of the exercise or latest exercise of either or both of the powers: s 77(4) (as so added).

12 Ibid s 77(3)(a) (as added: see note 11 supra).

13 Ibid s 77(3)(b) (as added: see note 11 supra).

14 As to petty sessions see PARA 591 et seq ante.

15 Magistrates' Courts Act 1980 s 77(5) (as added: see note 11 supra).

16 As to justices' clerks see PARA 631 et seq ante.

17 As to the justices' chief executive see PARA 624 et seq ante.

18 Magistrates' Courts Act 1980 s 77(6) (as added: see note 11 supra). Where such a notice has been given but the applicant does not appear at the time and place specified in the notice, the magistrates' court may proceed with the consideration of the application in his absence: s 77(7) (as so added). If a warrant of commitment in respect of the sum adjudged to be paid has been issued before the hearing of the application, the court has power to order that the warrant ceases to have effect and, if the applicant has been arrested in pursuance of it, to order that he be released, but it must only make an order under this provision if it is satisfied that the change of circumstances on which the applicant relies was not put before the magistrates' court when it was determining whether to issue the warrant: s 77(8) (as so added). As to the procedure for the review of postponement of warrant of commitment see the Magistrates' Courts Rules 1981, SI 1981/552, r 52A (added by SI 1988/2132). For the form of notice see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Form 53A (as added and amended).

19 Ie by the Magistrates' Courts Rules 1981, SI 1981/552, r 109 (see PARA 638 ante), or by the Magistrates' Courts (Forms) Rules 1981, SI 1981/553 (as amended).

20 Magistrates' Courts Rules 1981, SI 1981/552, r 95.

21 Magistrates' Courts Act 1980 s 124.

22 Ibid s 78(1). See the text and notes 25-26 infra.

23 As to trespass see TORT vol 45(2) (Reissue) PARA 425 et seq.

24 Magistrates' Courts Act 1980 s 78(2). If any person removes any goods marked in accordance with the rules made under s 144 (as amended) (see PARA 588 ante) as articles impounded in the execution of a warrant of distress, or defaces or removes any such mark, he is liable on summary conviction to a fine not exceeding level 1 on the standard scale: s 78(4) (amended by virtue of the Criminal Justice Act 1982 ss 37, 46); Magistrates' Courts Act 1980 s 150(1). If any person charged with the execution of a warrant of distress wilfully retains from the proceeds of a sale of the goods on which distress is levied, or otherwise exacts, any greater costs and charges than those properly payable, or makes any improper charge, he is liable on summary conviction to a fine not exceeding level 1 on the standard scale: s 78(5) (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). As to the standard scale see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. See the text and notes 25-26 infra.

25 le in the Magistrates' Courts Act 1980 s 78 (as amended).

26 Ibid s 78(3).

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 852-877 Fines and Compensation

The Courts Act 2003 s 97, Sch 5 make provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings: see PARA 877A.

As to the mutual recognition of financial penalties see PARA 877B.

Provision is also made for the discharge of fines by means of unpaid work: see s 97, Sch 6; Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004, SI 2004/2196; Discharge of Fines by Unpaid Work (Issue of Summons) Regulations 2004, SI 2004/2197; Discharge of Fines by Unpaid Work (Pilot Schemes) Order 2004, SI 2004/2198 (amended by SI 2005/563, SI 2005/617, SI 2006/502, SI 2007/773, SI 2008/621).

A register is to be kept, in accordance with regulations, of sums which are, for the purposes of the Magistrates' Courts Act 1980, sums adjudged to be paid by a conviction or order of a magistrates' court: see Courts Act 2003 s 98; and CIVIL PROCEDURE vol 12 (2009) PARA 1147.

SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to the enforcement of fines see Pt 52.

### 860 Issue of warrants of distress and commitment

TEXT AND NOTE 14--For 'for the petty sessions area' read 'in the local justice area': Magistrates' Courts Act 1980 s 77(5) (amended by the Courts Act 2003 Sch 8 para 218(2)).

TEXT AND NOTES 16-18--1980 Act s 77(6) substituted: 2003 Act Sch 8 para 218(3).

NOTE 18--SI 1981/553 Sch 2 Form 52A revoked: SI 2003/1236.

NOTE 24--1980 Act s 78(4) amended: 2003 Act Sch 8 para 219.



Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(iv) Fines and Compensation/B. ENFORCEMENT SUBSEQUENT TO CONVICTION/(A) Distress, Imprisonment or Detention in Default/861. Execution of warrants.

### **861. Execution of warrants.**

A warrant of arrest<sup>1</sup>, commitment<sup>2</sup>, detention, or distress<sup>3</sup> or a search warrant<sup>4</sup> issued by a justice of the peace may be executed anywhere in England<sup>5</sup> and Wales<sup>6</sup> by any person to whom it is directed or by any constable acting within his police area<sup>7</sup>.

Any warrant of arrest, commitment, detention or distress issued by a justice of the peace under any provision specified for these purposes by an order<sup>8</sup> made by the Lord Chancellor<sup>9</sup> and the Secretary of State<sup>10</sup>, acting jointly<sup>11</sup>, or for the enforcement of a court order of any description so specified<sup>12</sup>, may be executed<sup>13</sup> anywhere in England and Wales by a civilian enforcement officer<sup>14</sup>. Where a warrant has been executed by a civilian enforcement officer, a written statement indicating the name of the officer<sup>15</sup>, the authority by which he is employed<sup>16</sup>, and that he is authorised<sup>17</sup> to execute warrants<sup>18</sup>, must, on the demand of the person arrested, committed or detained or against whom distress is levied, be shown to him as soon as practicable<sup>19</sup>.

A warrant of arrest, commitment, detention or distress issued by a justice of the peace may also be executed anywhere in England and Wales: (1) by an individual who is an approved enforcement agency<sup>20</sup>; (2) by a director of a company which is an approved enforcement agency<sup>21</sup>; (3) by a partner in a partnership which is an approved enforcement agency<sup>22</sup>; or (4) by an employee of an approved enforcement agency who is authorised in writing by the agency to execute warrants<sup>23</sup>. Where a warrant has been so executed, a written statement must, on the demand of the person arrested, committed or detained or against whom distress is levied, be shown to him as soon as practicable indicating<sup>24</sup>: (a) the name of the person by whom the warrant was executed<sup>25</sup>; (b) if he is a director of, or partner in, an approved enforcement agency, the fact that he is a director of, or partner in, that agency<sup>26</sup>; (c) if he is an employee of an approved enforcement agency, the fact that he is an employee authorised in writing by that agency to execute warrants<sup>27</sup>; and (d) the fact that his name, or that of the agency indicated, is contained in the register maintained<sup>28</sup> by the magistrates' courts committee concerned<sup>29</sup>.

Basic personal information<sup>30</sup> held by a relevant public authority<sup>31</sup> may, on the application of a justices' chief executive<sup>32</sup>, be supplied by the authority to him, or to a justices' clerk<sup>33</sup> appointed by, or member of the staff of, his magistrates' courts committee who is specified in the application, for the purpose of facilitating the enforcement of a warrant of arrest, commitment, detention or distress issued by a justice of the peace<sup>34</sup>. Information supplied to any person for the purpose of facilitating the enforcement of a warrant may be supplied by him for that purpose to: (i) any person entitled to execute the warrant<sup>35</sup>; (ii) any employee of a body or person who is an approved enforcement agency<sup>36</sup> in relation to the warrant<sup>37</sup>; or (iii) any person who is the justices' chief executive, a justices' clerk or a member of the staff of the magistrates' courts committee whose justices' chief executive made the application for the information<sup>38</sup>.

A warrant arrest, commitment, detention or distress may be executed by any person entitled to execute it even though it is not in his possession at the time<sup>39</sup>. Certain warrants<sup>40</sup> may be executed by a constable even though it is not in his possession at the time<sup>41</sup>. Where a warrant is executed by a person not in possession of it, the warrant must, on the demand of the person arrested, committed or detained or against whom distress is levied, be shown to him as soon as practicable<sup>42</sup>.

1 As to warrants of arrest see PARA 695 et seq ante.

2 As to warrants of commitment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1162.

- 3 As to warrants of distress see DISTRESS vol 13 (2007 Reissue) PARA 1134 et seq.
- 4 As to search warrants see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 871 et seq.
- 5 For the meaning of 'England' see PARA 501 note 7 ante.
- 6 For the meaning of 'Wales' see PARA 501 note 7 ante.
- 7 Magistrates' Courts Act 1980 s 125(2). Section 125(2) does not apply to a warrant of commitment or a warrant of distress issued under the General Rate Act 1967 Pt VI (ss 96-107) (repealed): Magistrates' Courts Act 1980 s 125(2).
- 8 The power to make such orders is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: *ibid* s 125A(5) (ss 125A-125D added by the Access to Justice Act 1999 s 92). In exercise of this power the Magistrates' Courts Warrants (Specification of Provisions) Order 2000, SI 2000/3278 has been made.
- 9 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.
- 10 As to the Secretary of State see PARA 530 note 8 ante.
- 11 Magistrates' Courts Act 1980 s 125A(3)(a) (as added: see note 8 *supra*).
- 12 *Ibid* s 125A(3)(b) (as added: see note 8 *supra*).
- 13 A warrant may be executed by any person entitled to execute it even though it is not in his possession at the time: see *ibid* s 125D (as added); and the text and notes 39-42 *infra*.
- 14 *Ibid* s 125A(1) (as added: see note 8 *supra*). For these purposes, 'civilian enforcement officer', in relation to a warrant, means a person who: (1) is employed by an authority of a prescribed class which performs functions in relation to any area specified in the warrant; and (2) is authorised in the prescribed manner to execute warrants: s 125A(2) (as so added). 'Prescribed' means prescribed by the rules made under s 144 (as amended) (see PARA 588 ante): s 150(1). As to the rules that have been made under s 125A(2) (as added) see the Magistrates' Courts (Civilian Enforcement Officers) Rules 2001, SI 2001/164.
- 15 Magistrates' Courts Act 1980 s 125A(4)(a) (as added: see note 8 *supra*).
- 16 *Ibid* s 125A(4)(b) (as added: see note 8 *supra*).
- 17 *Ie* in the manner prescribed by the rules: see note 14 *supra*.
- 18 Magistrates' Courts Act 1980 s 125A(4)(c) (as added: see note 8 *supra*).
- 19 *Ibid* s 125A(1) (as added: see note 8 *supra*).
- 20 *Ibid* s 125B(1)(a) (as added: see note 8 *supra*). For these purposes, 'approved enforcement agency', in relation to a warrant, means a person or body approved under the Justices of the Peace Act 1997 s 31A (as added) (see PARA 618 ante) by the magistrates' courts committee for the petty sessions area of the justice, or any of the justices, who issued the warrant: Magistrates' Courts Act 1980 s 125B(2) (as so added). Failure by a magistrates' courts committee to comply with any provision of, or made under the Justices of the Peace Act 1997 s 31A(2)-(5) (as added) (see PARA 618 ante) does not of itself render unlawful the execution of a warrant: Magistrates' Courts Act 1980 s 125B(3) (as so added). As to magistrates' courts committees see PARA 612 et seq ante. As to petty sessions see PARA 591 et seq ante.
- 21 *Ibid* s 125B(1)(b) (as added: see note 8 *supra*).
- 22 *Ibid* s 125B(1)(c) (as added: see note 8 *supra*).
- 23 *Ibid* s 125B(1)(d) (as added: see note 8 *supra*).
- 24 *Ibid* s 125B(4) (as added: see note 8 *supra*).
- 25 *Ibid* s 125B(5)(a) (as added: see note 8 *supra*).
- 26 *Ibid* s 125B(5)(b) (as added: see note 8 *supra*).
- 27 *Ibid* s 125B(5)(c) (as added: see note 8 *supra*).

28 le the register maintained under the Justices of the Peace Act 1997 s 31A(4) (as added): see PARA 618 ante.

29 Magistrates' Courts Act 1980 s 125B(5)(d) (as added: see note 8 supra).

30 For these purposes, 'basic personal information' means a person's name, date of birth or national insurance number or the address, or any of the addresses, of a person: *ibid* s 125C(2) (as so added).

31 For these purposes, 'relevant public authority' means a Minister of the Crown, government department, local authority or chief officer of police specified in an order made by the Lord Chancellor: *ibid* s 125C(2) (as added: see note 8 supra). The power to make orders conferred by s 125C(2) (as added) is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 125C(7) (as so added). In exercise of this power the Enforcement of Warrants (Disclosure of Information) Order 2000, SI 2000/3277 was made.

32 As to the justices' chief executive see PARA 624 et seq ante.

33 As to justices' clerks see PARA 631 et seq ante.

34 Magistrates' Courts Act 1980 s 125C(1) (as added: see note 8 supra).

35 *Ibid* s 125C(3)(a) (as added: see note 8 supra). A person who intentionally or recklessly discloses information supplied to him under s 125C (as added) otherwise than as permitted by s 125(3) (as added), or uses information so supplied otherwise than for the purpose of facilitating the enforcement of the warrant under s 125A(1) (as added) (see the text and notes 10-14 supra), commits an offence: s 125C(4) (as so added). However, it is not an offence under s 125C(4) (as added) to disclose any information in accordance with any enactment or order of a court or for the purposes of any proceedings before a court, or to disclose any information which has previously been lawfully disclosed to the public: s 125C(5) (as so added). A person guilty of an offence under s 125C(4) (as added) is liable on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine: s 125C(6) (as so added). As to the statutory maximum see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 140.

36 le for the purposes of *ibid* s 125B (as added): see the text and notes 20-29 supra.

37 *Ibid* s 125C(3)(b) (as added: see note 8 supra). See note 35 supra.

38 *Ibid* s 125C(3)(c) (as added: see note 8 supra). See note 35 supra.

39 *Ibid* s 125D(1) (as added: see note 8 supra).

40 The warrants to which *ibid* s 125D(2) (as added) (see the text to note 42 infra) apply are not those that apply to s 125A(1) (as added) (see the text and notes 8-14 supra), but are: (1) warrants to arrest a person in connection with an offence; (2) warrants under the Army Act 1955 s 186(3), the Air Force Act 1955 s 186(3), the Naval Discipline Act 1957 s 105(3) or the Reserve Forces Act 1996 s 100, Sch 2 (as amended) (desertion); (3) warrants under the General Rate Act 1967 s 102 (repealed) or s 104 (repealed) (insufficiency of distress); (4) warrants under the Family Law Act 1996 s 47(8) (failure to comply with occupation order or non-molestation order) (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 991); (5) warrants under the Crime and Disorder Act 1998 s 52(6), Sch 3 para 4 (as amended) (unwilling witnesses) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1138-1141); (6) warrants under the Powers of Criminal Courts (Sentencing) Act 2000 s 28, Sch 1 para 3(2) (offenders referred to court by youth offender panel); and (7) warrants under the Magistrates' Courts Act 1980 s 55 (non-appearance of defender) (see PARA 693 ante), s 76 (as amended) (enforcement of sums adjudged to be paid) (see PARA 860 ante), s 93 (as amended) (complaint for arrears) (see PARA 831 ante), s 97 (warrant for arrest of witness) (see PARA 734 ante) or s 97A (as added and amended) (warrant as to committal proceedings of witness) (see PARA 675 ante): s 125D(3) (as added: see note 8 supra).

41 *Ibid* s 125D(2) (as added: see note 8 supra).

42 *Ibid* s 125D(4) (as added: see note 8 supra).

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

## **852-877 Fines and Compensation**

The Courts Act 2003 s 97, Sch 5 make provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings: see PARA 877A.

As to the mutual recognition of financial penalties see PARA 877B.

Provision is also made for the discharge of fines by means of unpaid work: see s 97, Sch 6; Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004, SI 2004/2196; Discharge of Fines by Unpaid Work (Issue of Summons) Regulations 2004, SI 2004/2197; Discharge of Fines by Unpaid Work (Pilot Schemes) Order 2004, SI 2004/2198 (amended by SI 2005/563, SI 2005/617, SI 2006/502, SI 2007/773, SI 2008/621).

A register is to be kept, in accordance with regulations, of sums which are, for the purposes of the Magistrates' Courts Act 1980, sums adjudged to be paid by a conviction or order of a magistrates' court: see Courts Act 2003 s 98; and CIVIL PROCEDURE vol 12 (2009) PARA 1147.

SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to the enforcement of fines see Pt 52.

## **861 Execution of warrants**

TEXT AND NOTES 1-12--1980 Act s 125A(3A) (civilian enforcement officers) added: SI 2006/1737.

TEXT AND NOTES 8-14, 20-23--The Magistrates' Courts Act 1980 Sch 4A confers powers on persons authorised under s 125A or 125B for the purpose of executing warrants for the enforcement of fines and other orders: s 125BA (added by the Domestic Violence, Crime and Victims Act 2004 s 27(1)). Persons entitled to execute a warrant by virtue of the 1980 Act s 125A or 125B may also (1) enter and search any premises for the purpose of executing a warrant of arrest, commitment or detention issued in proceedings for or in connection with any criminal offence; (2) enter and search any premises for the purpose of executing a warrant of distress issued under s 76 (see PARA 860) for default in paying a sum adjudged to be paid by a conviction; (3) where a person is arrested in pursuance of a warrant of arrest, commitment or detention issued in proceedings for or in connection with any criminal offence (a) search the arrested person, if he has reasonable grounds for believing that the arrested person may present a danger to himself or others, and (b) search the arrested person for anything which he might use to assist him to escape from lawful custody: (Sch 4A paras 2, 3, 4(1)-(5) (Sch 4A added by the 2004 Act s 27(2), Sch 4). An officer searching a person under head (3)(a) may seize and retain anything he finds, if the officer has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or to any other person, and an officer searching a person under head (3)(b) may seize and retain anything he finds, if he has reasonable grounds for believing that the person might use it to assist him to escape from lawful custody (Sch 4A para 4(6), (7) (Sch 4A as so added)). An authorised officer may use reasonable force, if necessary, in the exercise of a power conferred on him by Sch 4A: Sch 4A para 5 (Sch 4A as so added).

NOTE 8--SI 2000/3278 amended: SI 2004/1835, SI 2007/3011.

TEXT AND NOTES 10, 11--Words 'and the Secretary of State, acting jointly' omitted: 1980 Act s 125A(3)(a) (amended by SI 2007/2128).

NOTE 20--The Lord Chancellor must maintain a register containing the names of all persons and bodies approved by him under the 1980 Act s 125B(2) and must make such arrangements as he considers appropriate for making the register available for inspection: s 125B(2A) (added by the Courts Act 2003 Sch 8 para 239(3)). 1980 Act s 125B(3) repealed: 2003 Act Sch 8 para 239(4), Sch 10.

TEXT AND NOTES 30-38--A magistrates' court may make a disclosure order if satisfied that it is necessary to do so for the purpose of executing a warrant of arrest, commitment, detention or distress issued by a justice of the peace in connection with the enforcement of a fine or other order imposed or made on conviction: 1980 Act s 125CA(1), (2) (ss 125CA, 125CB added by the 2004 Act s 28). A disclosure order is an order requiring the person to whom it is directed to supply the designated officer for the court with any of the following information about the person to whom the warrant relates: (1) his name, date of birth or national insurance number; (2) his address, or any of his addresses: 1980 Act s 125CA(3) (s 125CA as so added). A disclosure order may be made only on the application of a person entitled to execute the warrant: s 125CA(4) (s 125CA as so added). Section 125CA applies to the Crown as it applies to other persons: s 125CA(5) (s 125CA as so added). Information supplied to a person under such a disclosure order, or under s 125CB, may be supplied by him to (a) the applicant for the order or any other person entitled to execute the warrant concerned; (b) any employee of a body or person who, for the purposes of s 125B, is an approved enforcement agency in relation to the warrant; (c) any justices' clerk or other person appointed under the Courts Act 2003 s 2(1): 1980 Act s 125CB(1) (s 125CB as so added). A person who intentionally or recklessly discloses information supplied under a disclosure order otherwise than as permitted by s 125B(1), or who uses information so supplied otherwise than for the purpose of facilitating the execution of the warrant concerned, commits an offence: s 125CB(2) (s 125CB as so added). However, it is not such an offence to disclose any information in accordance with any enactment or order of a court or for the purposes of any proceedings before a court, or to disclose any information which has previously been lawfully disclosed to the public: s 125CB(3) (s 125CB as so added). A person guilty of an offence under s 125CB(2) is liable, on summary conviction, to a fine not exceeding the statutory maximum and, on conviction on indictment, to a fine: s 125CB(4) (s 125CB as so added).

TEXT AND NOTES 30-34--For 'of a justices' chief executive' read 'of the designated officer for a magistrates' court' and words 'appointed by... committee' omitted: 1980 s 125C(1) (amended by the Courts Act 2003 Sch 8 para 240(2), Sch 10).

NOTE 40--1980 Act s 125D(3) amended: Armed Forces Act 2006 Sch 16 para 89.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(iv) Fines and Compensation/B. ENFORCEMENT SUBSEQUENT TO CONVICTION/(A) Distress, Imprisonment or Detention in Default/862. Restrictions on imprisonment for default in payment of fine.

## **862. Restrictions on imprisonment for default in payment of fine.**

Where on the occasion of the offender's conviction a magistrates' court<sup>1</sup> does not issue a warrant of commitment<sup>2</sup> for a default in paying a sum adjudged to be paid by conviction<sup>3</sup> of a magistrates' court<sup>4</sup>, or fix a term of imprisonment<sup>5</sup> to be served by him in the event of any such default, it must not thereafter issue a warrant of commitment for any such default or for want

of sufficient distress to satisfy such a sum unless<sup>6</sup> he is already serving a sentence of custody for life or a term of imprisonment, detention<sup>7</sup> or detention in a young offender institution<sup>8</sup>, or unless the magistrates' court has since the conviction inquired into his means in his presence on at least one occasion<sup>9</sup>. Where a magistrates' court is required to inquire into a person's means, the court may not on the occasion of the inquiry or at any time thereafter issue a warrant of commitment for a default in paying any such sum unless, in the case of an offence punishable with imprisonment<sup>10</sup>, the offender appears to the magistrates' court to have sufficient means to pay the sum<sup>11</sup>, or unless the magistrates' court is satisfied that the default is due to the offender's wilful refusal or culpable neglect<sup>12</sup> and the magistrates' court has considered or tried all other methods of enforcing payment of the sum and it appears to the court that they are inappropriate or unsuccessful<sup>13</sup>. Where a warrant of commitment is issued on the ground that one of these conditions is satisfied, the magistrates' court must state that fact, specifying the ground, in the warrant<sup>14</sup>.

After the occasion of an offender's conviction by a magistrates' court, the court must not issue a warrant of commitment for a default in paying the sum or fix such a term except at a hearing at which the offender is present<sup>15</sup>, unless:

- 372 (1) the magistrates' court has previously fixed a term of imprisonment<sup>16</sup> which is to be served by the offender in the event of a default in paying a sum adjudged to be paid by the conviction<sup>17</sup>; or
- 373 (2) the offender is serving a sentence of custody for life, or a term of imprisonment, detention<sup>18</sup> or detention in a young offender institution<sup>19</sup>.

Where a fine<sup>20</sup> has been imposed on conviction of an offender by a magistrates' court, the court may at any time remit the whole or any part of the fine if it thinks it just to do so having regard to a change of circumstances which has occurred: (a) where the magistrates' court is considering whether to issue a warrant of commitment after the issue of such a warrant in respect of a fine has been postponed<sup>21</sup>, since the relevant time<sup>22</sup>; or (b) in any other case, since the date of conviction<sup>23</sup>. Where the magistrates' court remits the whole or part of the fine after a term of imprisonment has been fixed, it must also reduce the term by an amount which bears the same proportion to the whole term as the amount remitted bears to the whole fine or, as the case may be, it must remit the whole term<sup>24</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 As to warrants of commitment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1162. As to the issue of warrants of commitment see PARA 860 ante.

3 As to the use of the term 'a sum adjudged to be paid by conviction or order of a magistrates' court' see PARA 675 note 23 ante.

4 As to the circumstances in which a magistrates' court may on the occasion of conviction issue a warrant of commitment for a default in payment of the sum adjudged see PARA 854 ante.

5 Ie under the Magistrates' Courts Act 1982 s 77(2) (as amended; prospectively further amended): see PARA 860 ante.

6 Ibid s 82(3). The Magistrates' Courts Act 1980 Pt III (ss 75-96A) (as amended) has effect in relation to a person aged 18 or over but less than 21 as if any reference to committing a person to prison, or fixing a term of imprisonment for a default, were a reference to committing the person to, or, as the case may be, to fixing a term of, detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 108 (prospectively repealed) (see PARA 854 ante; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 11); and any reference to warrants of commitment, or to periods of imprisonment imposed for default, are construed accordingly: Magistrates' Courts Act 1980 s 96A (added by the Criminal Justice Act 1982 s 77, Sch 14 para 54; and amended by the Criminal Justice Act 1991 s 68, Sch 8 para 6; and the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 70). As from a day to be appointed the Magistrates' Courts Act 1980 s 96A (as added and amended) is repealed: see the Criminal Justice and Court Services Act 2000 ss 74, 75, Sch 7 Pt II paras 58, 65, Sch 8.

7 le under the Criminal Justice Act 1982 s 9 (repealed): see note 8 infra.

8 Magistrates' Courts Act 1980 s 82(3)(a) (amended by the Criminal Justice Act 1982 s 77, Sch 14 para 52(b); and by virtue of the Criminal Justice Act 1988 s 123(6), Sch 8 paras 1, 2). As from a day to be appointed the reference in the Magistrates' Courts Act 1980 s 82(3)(a) (as amended) to the Criminal Justice Act 1982 s 9 (repealed) is repealed and replaced with a reference to the Powers of Criminal Courts (Sentencing) Act 2000 s 108 (prospectively repealed) (see PARA 854 ante; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 11): see the Criminal Justice and Court Services Act 2000 s 74, Sch 7 Pt II paras 58, 63(b). At the date at which this volume states the law no such day had been appointed. As to young offender institutions see PRISONS vol 36(2) (Reissue) PARAS 643-656.

A defendant is already serving a term of imprisonment once the sentence is pronounced, and accordingly, provided the offender is given an opportunity to make representations against the issue of such a warrant, the court may issue a warrant of commitment in the same proceedings, subsequent to the imposition of the custodial sentence: *R v Grimsby and Cleethorpes Justices, ex p Walters* [1997] 1 WLR 89, (1996) 161 JP 25, DC.

9 Magistrates' Courts Act 1980 s 82(3)(b). For the form of warrant see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Form 52 (as substituted and amended). See PARA 505 note 12 ante. As to the inquiry into the means of the offender see PARA 864 post.

10 As to the use of the term 'punishable with imprisonment' see PARA 693 note 20 ante.

11 Magistrates' Courts Act 1980 s 82(4)(a).

12 Ibid s 82(4)(b)(i). 'Wilful refusal' or 'culpable neglect' must be established either on the criminal standard of proof or on a high civil standard: *R v South Tyneside Justices, ex p Martin* (1995) Independent, 20 September (consideration of 'culpable neglect' in the context of failure to pay community charge). There must be some causal connection between the conduct of the defaulter and the failure to pay which is blameworthy: *R v Manchester City Magistrates' Court, ex p Davies* [1989] QB 631, [1989] 1 All ER 90, CA. For a distinction between 'wilful refusal' and 'culpable neglect' see *R v Luton Magistrates' Court, ex p Sullivan* [1992] 1 FCR 475, [1992] 2 FLR 196.

13 Magistrates' Courts Act 1980 s 82(4)(b)(ii). The methods of enforcing payment are: (1) a warrant of distress under s 76 (as amended) (see PARA 860 ante); (2) an application to the High Court or county court for enforcement under s 87 (as amended) (see PARA 869 post); (3) an order under s 88 (as amended) (see PARAS 874-876 post); (4) an attachment of earnings order; and (5) if the offender is under the age of 25, an order under the Criminal Justice Act 1982 s 17 (repealed): Magistrates' Courts Act 1980 s 82(4A) (added by the Criminal Justice Act 1988 s 61(1); and amended by the Crime (Sentences) Act 1997 s 55, Sch 4 para 10(1)). As from a day to be appointed the reference in the Magistrates' Courts Act 1980 s 82(4A) (as added and amended) to an order under the Criminal Justice Act 1982 s 17 (repealed) is repealed and replaced with a reference to the Powers of Criminal Courts (Sentencing) Act 2000 s 60 (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 267 et seq) (attendance centre orders): see the Criminal Justice and Court Services Act 2000 Sch 7 Pt II paras 58, 63(c). At the date at which this volume states the law no such day had been appointed. Whilst not specifically referred to in the Magistrates' Courts Act 1980 s 82(4A) (as added and amended), the court may apply to the Secretary of State for an order for deduction from income support of fines and sums required to be paid by compensation: see the Criminal Justice Act 1991 s 24; and PARA 877 post. As to attachment of earnings orders see PARA 832 et seq ante. As to the Secretary of State see PARA 530 note 8 ante. As to warrants of distress see DISTRESS vol 13 (2007 Reissue) PARA 1134 et seq.

The court must consider or try all alternative methods of enforcing payment before issuing a warrant of commitment: *R v Norwich Magistrates' Court, ex p Lilly* (1987) 151 JP 689, DC. 'Considering' other methods includes not only consideration in the retiring room when all the evidence has been received but also canvassing issues with the defaulter in court: *R v York Magistrates' Court, ex p Grimes* (1997) 161 JP 550, DC. Committal of a single mother with little income is inappropriate. Imprisonment would be an interference with her children's right to family life and must therefore be justified in terms of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 8 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 149 et seq). A money payment supervision order should have been tried first: *R (on the application of Stokes) v Gwent Magistrates' Court* [2001] EWHC Admin 569, 165 JP 766, DC. As to money payment supervision orders see PARA 874 et seq post.

14 Magistrates' Courts Act 1980 s 82(6).

15 As to the process for securing the attendance of offenders for the purposes of ibid s 82(5) (as amended) see PARA 863 post.

16 le under ibid s 77(2) (as amended; prospectively further amended): see PARA 860 ante. A term of imprisonment fixed by the Crown Court under what is now the Powers of Criminal Courts (Sentencing) Act 2000

s 139(2) is to be treated as having been fixed by the magistrates' court: *R v Hastings and Rother Justices, ex p Anscombe* (1998) 162 JP 340, DC.

17 Magistrates' Courts Act 1980 s 82(5)(a).

18 *Ie* under the Criminal Justice Act 1982 s 9 (repealed): see note 19 *infra*.

19 Magistrates' Courts Act 1980 s 82(5)(b) (amended by the Criminal Justice Act 1982 Sch 14 para 52(b); and by virtue of the Criminal Justice Act 1988 Sch 8 paras 1, 2). As from a day to be appointed the reference in the Magistrates' Courts Act 1980 s 82(5)(b) (as amended) to the Criminal Justice Act 1982 s 9 (repealed) is repealed and replaced with a reference to the Powers of Criminal Courts (Sentencing) Act 2000 s 108 (prospectively repealed) (see PARA 854 *ante*; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 11): see the Criminal Justice and Court Services Act 2000 Sch 7 Pt II paras 58, 63(b). At the date at which this volume states the law no such day had been appointed.

A magistrates' court may not issue a warrant of commitment under the Magistrates' Courts Act 1980 s 82(5) (as amended; prospectively further amended) at a hearing at which the offender is not present unless the justices' chief executive for the court has first served on the offender a notice in writing stating that the court intends to hold a hearing to consider whether to issue such a warrant and giving the reason why the court so intends: s 82(5A) (s 82(5A)-(5F) added by the Criminal Justice Act 1988 s 61(3),(4); and the Magistrates' Courts Act 1980 s 82(5A) amended by the Access to Justice Act 1999 s 90(1), Sch 13 paras 95, 104). Where, after the occasion of an offender's conviction by a magistrates' court, the court holds a hearing for the purpose of considering whether to issue a warrant of commitment for default in paying a sum adjudged to be paid by the conviction, it must consider such information about the offender's means as is available to it unless it has previously inquired into the offender's means, and unless it has previously postponed the issue of the warrant of commitment under the Magistrates' Courts Act 1980 s 77(2) (as amended; prospectively further amended) (see PARA 860 *ante*): s 82(5B) (as so added). A notice under s 82(5A) (as added and amended) must state the time and place appointed for the hearing, and must inform the offender that, if he considers that there are grounds why the warrant should not be issued, he may make representations to the magistrates' court in person or in writing: s 82(5C) (as so added). However, the magistrates' court may exercise its powers in relation to the issue of a warrant whether or not he makes representations: s 82(5C) (as so added). The time stated in a notice under s 82(5A) (as added and amended) must not be earlier than 21 days after the issue of the notice: s 82(5D) (as so added). However, where a magistrates' court exercises in relation to an offender the power conferred by s 77(2) (as amended; prospectively further amended) (see PARA 860 *ante*) and at the same hearing issues a notice under s 82(5A) (as added and amended) in relation to him, the time stated in the notice may be a time on any day following the end of the period for which the issue of the warrant of commitment has been postponed: s 82(5E) (as so added). A notice under s 82(5A) (as added and amended) to be served on any person is deemed to be served on that person if it is sent by registered post or the recorded delivery service addressed to him at his last known address, notwithstanding that the notice is returned as undelivered or is for any other reason not received by that person: s 82(5F) (as so added). See further *R v Doncaster Justices, ex p Hannan* [1998] RVR 254, DC (where, although the Magistrates' Courts Act 1980 s 82(5F) (as added) was not drawn to the attention of the court, it was held that it was unwise for justices to issue a warrant of commitment where the offender has failed to attend the committal hearing and the notice of the hearing is returned to the court by the Post Office marked 'address inaccessible').

20 For these purposes 'fine' does not include any other sum adjudged to be paid on conviction, whether as a pecuniary penalty, forfeiture, compensation or otherwise: Magistrates' Courts Act 1980 s 85(4) (s 85 substituted by the Criminal Justice Act 1988 s 61(1), (5)). As to the meaning of 'fine' see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 139.

21 *Ie* under the Magistrates' Courts Act 1980 s 77(2) (as amended; prospectively further amended): see PARA 860 *ante*.

22 *Ibid* s 85(1)(a) (as substituted: see note 20 *supra*). The reference in the text to the relevant time is a reference to the relevant time as defined in s 77(4) (as added): see PARA 860 *ante*.

23 *Ibid* s 85(1)(b) (as substituted: see note 20 *supra*).

24 *Ibid* s 85(1) (as substituted see note 20 *supra*). In calculating the reduction in a term of imprisonment, any fraction of a day is to be left out of account: s 85(3) (as so substituted). A magistrates' court must not remit the whole or any part of a fine imposed by, or sum due under a recognisance forfeited by the Crown Court, the criminal division of the Court of Appeal or the House of Lords on appeal from that division without the consent of the Crown Court: Powers of Criminal Courts (Sentencing) Act 2000 s 140(5). As to recognisances see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 *et seq*. As to the entry to be made in the register see PARA 628 *ante*.

## UPDATE



## **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

## **852-877 Fines and Compensation**

The Courts Act 2003 s 97, Sch 5 make provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings: see PARA 877A.

As to the mutual recognition of financial penalties see PARA 877B.

Provision is also made for the discharge of fines by means of unpaid work: see s 97, Sch 6; Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004, SI 2004/2196; Discharge of Fines by Unpaid Work (Issue of Summons) Regulations 2004, SI 2004/2197; Discharge of Fines by Unpaid Work (Pilot Schemes) Order 2004, SI 2004/2198 (amended by SI 2005/563, SI 2005/617, SI 2006/502, SI 2007/773, SI 2008/621).

A register is to be kept, in accordance with regulations, of sums which are, for the purposes of the Magistrates' Courts Act 1980, sums adjudged to be paid by a conviction or order of a magistrates' court: see Courts Act 2003 s 98; and CIVIL PROCEDURE vol 12 (2009) PARA 1147.

SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to the enforcement of fines see Pt 52.

## **862 Restrictions on imprisonment for default in payment of fine**

TEXT AND NOTES--Magistrates' Courts Act 1980 ss 82, 84, 85 amended: Courts Act 2003 Sch 8 paras 220-222.

NOTE 9--SI 1981/553 Sch 2 Form 52 revoked: SI 2003/1236.

NOTE 24--Powers of Criminal Courts (Sentencing) Act 2000 s 140(5) amended: Constitutional Reform Act 2005 Sch 9 para 69 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(iv) Fines and Compensation/B. ENFORCEMENT SUBSEQUENT TO CONVICTION/(A) Distress, Imprisonment or Detention in Default/863. Process for securing attendance of offender.

### **863. Process for securing attendance of offender.**

A magistrates' court<sup>1</sup> may, for the purpose of securing the attendance of an offender at a hearing to determine whether to issue a warrant of commitment<sup>2</sup> issue a summons requiring the offender to appear before the court at the time and place appointed in the summons<sup>3</sup>, or issue a warrant to arrest<sup>4</sup> him and bring him before the court<sup>5</sup>. On the failure of the offender to appear before the magistrates' court in answer to a summons, the court may issue a warrant to arrest him and bring him before the court<sup>6</sup>.

<sup>1</sup> For the meaning of 'magistrates' court' see PARA 583 ante.

2 le the attendance of an offender at a hearing required to be held under the Magistrates' Courts Act 1980 s 82(5) (as amended): see PARA 862 ante. A magistrates' court must not determine under s 82 (as amended) (see PARA 862 ante) at a hearing at which the offender is not present whether to issue a warrant of commitment except when composed of at least two justices: see s 121(2) (amended by the Criminal Justice Act 1988 s 61(1), (6)). The Magistrates' Courts Act 1980 s 121(2) (as amended) has effect subject to the provisions of the Magistrates' Courts Act 1980 relating to family proceedings: s 121(8) (amended by the Children Act 1989 s 92, Sch 11 para 8). As to warrants of commitment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1162.

3 Magistrates' Courts Act 1980 s 83(1)(a).

4 A warrant issued under *ibid* s 83 (as amended) may be executed in like manner, and the like proceedings may be taken with a view to its execution, in any part of the United Kingdom, as if it had been issued under s 13 (as amended) (see PARA 693 ante): s 83(3). No fee is chargeable for such summons or warrant: s 137(2) (as amended), Sch 6 Pt II. See *DPP v Peacock* [1989] Crim LR 372, DC (considering whether, at time of arrest, the warrant had to be in the possession of the person executing it); but see the Magistrates' Courts Act 1980 s 125D (as added); and PARA 861 ante. For forms of summons and warrant see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Forms 53, 54 (as amended). For the meaning of 'United Kingdom' see PARA 528 note 3 ante. As to warrants of arrest see PARA 695 et seq ante.

5 Magistrates' Courts Act 1980 s 83(1)(b).

6 *Ibid* s 83(2).

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 852-877 Fines and Compensation

The Courts Act 2003 s 97, Sch 5 make provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings: see PARA 877A.

As to the mutual recognition of financial penalties see PARA 877B.

Provision is also made for the discharge of fines by means of unpaid work: see s 97, Sch 6; Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004, SI 2004/2196; Discharge of Fines by Unpaid Work (Issue of Summons) Regulations 2004, SI 2004/2197; Discharge of Fines by Unpaid Work (Pilot Schemes) Order 2004, SI 2004/2198 (amended by SI 2005/563, SI 2005/617, SI 2006/502, SI 2007/773, SI 2008/621).

A register is to be kept, in accordance with regulations, of sums which are, for the purposes of the Magistrates' Courts Act 1980, sums adjudged to be paid by a conviction or order of a magistrates' court: see Courts Act 2003 s 98; and CIVIL PROCEDURE vol 12 (2009) PARA 1147.

SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to the enforcement of fines see Pt 52.

### 863 Process for securing attendance of offender

NOTE 4--SI 1981/553 Sch 2 Forms 53, 54 revoked: SI 2003/1236.

TEXT AND NOTE 6--1980 Act s 83(2) amended: SI 2006/1737.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(iv) Fines and Compensation/B. ENFORCEMENT SUBSEQUENT TO CONVICTION/(A) Distress, Imprisonment or Detention in Default/864. Means inquiry.

#### **864. Means inquiry.**

A magistrates' court<sup>1</sup> may, for the purpose of enabling inquiry to be made into the means of the offender<sup>2</sup> issue a summons requiring the offender to appear before the court at the time and place appointed in the summons<sup>3</sup>, or issue a warrant to arrest him<sup>4</sup> and bring him before the court<sup>5</sup>. On the failure of the offender to appear before the magistrates' court in answer to a summons, the court may issue a warrant to arrest him and bring him before the court<sup>6</sup>.

A magistrates' court may, either before or on inquiring into a person's means<sup>7</sup>, and a justice of the peace acting for the same petty sessions area<sup>8</sup> as that court may before any such inquiry, order him to furnish to the magistrates' court within a period specified in the order such a statement of his means as the court may require<sup>9</sup>. A person who fails to comply with such an order is liable on summary conviction to a fine<sup>10</sup>. Where a person in furnishing any statement in pursuance of an order makes a statement which he knows to be false in a material particular or recklessly furnishes a statement which is false in a material particular, or knowingly fails to disclose any material fact, he is liable on summary conviction to imprisonment<sup>11</sup> or a fine<sup>12</sup> or both<sup>13</sup>.

A statement in writing to the effect that wages of any amount have been paid to a person during any period, purporting to be signed by or on behalf of his employer, is evidence of the facts stated in it in any proceedings taken before a magistrates' court for enforcing payment by the person to whom the wages are stated to have been paid of a sum adjudged to be paid by a summary conviction<sup>14</sup> or order<sup>15</sup>, or on any application made by or against that person for the making of a magistrates' courts maintenance order<sup>16</sup>, or for the variation, revocation, discharge or revival of such an order<sup>17</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 Ie under the Magistrates' Courts Act 1980 s 82 (as amended): see PARAS 854, 862 ante. A magistrates' court must not hold an inquiry into the means of an offender for the purposes of s 82 (as amended) except when composed of at least two justices: see s 121(2). There is no onus on the prosecution to prove that the offender has or has had the means to pay: *R v Dunne, ex p Sinnatt* [1943] KB 516, [1943] 2 All ER 222, DC. If the magistrates' court holding the means inquiry is composed of the same justices as convicted the offender, consideration may be given to evidence of his means disclosed at the original trial: see *R v Dunne, ex p Sinnatt* supra.

3 Magistrates' Courts Act 1980 s 83(1)(a).

4 A warrant issued under *ibid* s 83 (as amended) may be executed in like manner, and the like proceedings may be taken with a view to its execution, in any part of the United Kingdom, as if it had been issued under s 13 (as amended) (see PARA 693 ante): s 83(3). No fee is chargeable for such summons or warrant: s 137(2) (as amended), Sch 6 Pt II. See *DPP v Peacock* [1989] Crim LR 372, DC (considering whether, at time of arrest, the warrant had to be in the possession of the person executing it); but see the Magistrates' Courts Act 1980 s 125D (as added); and PARA 861 ante. For forms of summons and warrant see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Forms 53, 54 (as amended). For the meaning of 'United Kingdom' see PARA 528 note 3 ante. As to warrants of arrest see PARA 695 et seq ante.

5 Magistrates' Courts Act 1980 s 83(1)(b). As to the notice of the date of the means inquiry see the Magistrates' Courts Rules 1981, SI 1981/552, r 52.

6 Magistrates' Courts Act 1980 s 83(2).

7 Ie under *ibid* s 82 (as amended): see PARAS 854, 862 ante.

8 As to petty sessions see PARA 591 et seq ante.

9 Magistrates' Courts Act 1980 s 84(1). The justices' clerk may exercise the power of a single justice in relation to an inquiry into the means of a person: see the Justices' Clerks Rules 1999, SI 1999/2784, r 3, Schedule para 33; and PARA 638 ante.

10 Magistrates' Courts Act 1980 s 84(2). The reference in the text to a fine is to a fine not exceeding level 3 on the standard scale: s 84(2) (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142.

11 le for a term not exceeding four months: Magistrates' Courts Act 1980 s 84(3).

12 le not exceeding level 3 on the standard scale: *ibid* s 84(3) (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46).

13 Magistrates' Courts Act 1980 s 84(3). Proceedings in respect of an offence under s 84(3) (as amended) may, notwithstanding anything in s 127(1) (limitation of time) (see PARA 589 ante), be commenced at any time within two years from the date of the commission of the offence or within six months from its first discovery by the prosecutor, whichever period expires the earlier: s 84(4).

14 As to the use of the term 'a sum adjudged to be paid by conviction or order of a magistrates' court' see PARA 675 note 23 ante.

15 Magistrates' Courts Act 1980 s 100(a).

16 For the meaning of 'magistrates' court maintenance order' see PARA 823 note 16 ante. As to the meaning of 'maintenance order' see PARA 837 note 6 ante.

17 Magistrates' Courts Act 1980 s 100(b) (substituted by the Family Law Reform Act 1987 s 33(1), Sch 2 para 87, Sch 3 para 1). As to the application of the Magistrates' Courts Act 1980 s 100 (as amended) to distress for rates see s 151.

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 852-877 Fines and Compensation

The Courts Act 2003 s 97, Sch 5 make provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings: see PARA 877A.

As to the mutual recognition of financial penalties see PARA 877B.

Provision is also made for the discharge of fines by means of unpaid work: see s 97, Sch 6; Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004, SI 2004/2196; Discharge of Fines by Unpaid Work (Issue of Summons) Regulations 2004, SI 2004/2197; Discharge of Fines by Unpaid Work (Pilot Schemes) Order 2004, SI 2004/2198 (amended by SI 2005/563, SI 2005/617, SI 2006/502, SI 2007/773, SI 2008/621).

A register is to be kept, in accordance with regulations, of sums which are, for the purposes of the Magistrates' Courts Act 1980, sums adjudged to be paid by a conviction or order of a magistrates' court: see Courts Act 2003 s 98; and CIVIL PROCEDURE vol 12 (2009) PARA 1147.

SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to the enforcement of fines see Pt 52.

### 864 Means inquiry

NOTE 4--SI 1981/553 Sch 2 Forms 53, 54 revoked: SI 2003/1236.

TEXT AND NOTE 6--1980 Act s 83(2) amended: SI 2006/1737.

TEXT AND NOTE 9--1980 Act s 84(1) amended: Courts Act 2003 Sch 8 para 221.

NOTE 9--SI 1999/2784, r 3, Schedule para 33 now Justices' Clerks Rules 2005, SI 2005/545, r 3, Schedule para 33.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(iv) Fines and Compensation/B. ENFORCEMENT SUBSEQUENT TO CONVICTION/(A) Distress, Imprisonment or Detention in Default/865. Maximum terms of imprisonment in default of payment.

### **865. Maximum terms of imprisonment in default of payment.**

The maximum term for which a person may be committed to prison under a warrant of commitment<sup>1</sup> for default in paying a sum adjudged to be paid by a conviction or order<sup>2</sup> of a magistrates' court<sup>3</sup> must not, subject to the provisions of any enactment<sup>4</sup> passed after 31 December 1879<sup>5</sup>, exceed the period applicable to the case<sup>6</sup>. The maximum term applicable to a sum of any amount enforceable as a civil debt<sup>7</sup> is six weeks<sup>8</sup>. In other cases the maximum term varies in relation to the amount due at the time imprisonment or detention is imposed<sup>9</sup>. Where the amount due at the time imprisonment or detention is imposed is so much of a sum adjudged to be paid by a summary conviction as remains due after part payment, then the maximum period applicable to the amount is the period applicable to the whole sum reduced by such number of days as bears to the total number of days therein the same proportion as the part paid bears to the whole sum<sup>10</sup>.

1 As to warrants of commitment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1162.

2 As to the use of the term 'a sum adjudged to be paid by conviction or order of a magistrates' court' see PARA 675 note 23 ante.

3 For the meaning of 'magistrates' court' see PARA 583 ante.

4 For the meaning of 'enactment' see PARA 505 note 16 ante.

5 Ie since the commencement of the Summary Jurisdiction Act 1879 (repealed).

6 See the Magistrates' Courts Act 1980 s 76(3). The Magistrates' Courts Act 1980 Pt III (ss 75-96A) (as amended) has effect in relation to a person aged 18 or over but less than 21 as if any reference to committing a person to prison, or fixing a term of imprisonment for a default, were a reference to committing the person to, or, as the case may be, to fixing a term of, detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 108 (prospectively repealed) (see PARA 854 ante; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 11); and any reference to warrants of commitment, or to periods of imprisonment imposed for default, are construed accordingly: Magistrates' Courts Act 1980 s 96A (added by the Criminal Justice Act 1982 s 77, Sch 14 para 54; and amended by the Criminal Justice Act 1991 s 68, Sch 8 para 6; and the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 70). As from a day to be appointed the Magistrates' Courts Act 1980 s 96A (as added and amended) is repealed: see the Criminal Justice and Court Services Act 2000 ss 74, 75, Sch 7 Pt II paras 58, 65, Sch 8.

Where a single warrant is issued for several outstanding fines, the maximum period of imprisonment which can be imposed is that applicable to the aggregate of the sums outstanding: *R v Southampton Justices, ex p Davies* [1981] 1 All ER 722, [1981] 1 WLR 374, DC (followed in *R v Midhurst Justices, ex p Seymour* (1983) 147 JP 266, DC). The term of imprisonment in default of payment may exceed the term which could have been imposed in the first instance under the statute constituting the offence: see *R v Hopkins* [1893] 1 QB 621, DC (followed in *R*

*v Leach, ex p Fritchley* [1913] 3 KB 40, DC). As to fines in lieu of imprisonment authorised by statute see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 139 et seq.

7 As to money recoverable as civil debts see PARA 826 ante.

8 See the Magistrates' Courts Act 1980 s 76, Sch 4 para 3.

9 See *ibid* Sch 4 para 1 (amended by the Criminal Justice Act 1982 s 77, Sch 14 para 59). Where the amount does not exceed £200, the maximum imprisonment is seven days; where it exceeds £200 but not £500 the maximum is fourteen days; where it exceeds £500 but not £1,000 the maximum is twenty eight days; where it exceeds £1,000 but not £2,500 the maximum is forty five days; where it exceeds £2,500 but not £5,000 the maximum is three months; where it exceeds £5,000 but not £10,000 the maximum is six months; and where it exceeds £10,000, the maximum is twelve months: Magistrates' Courts Act 1980 Sch 4 para 1 Table (Sch 4 para 1 as so amended; Sch 4 para 1 Table substituted by the Criminal Justice Act 1988 s 60(1); and amended by the Criminal Justice Act 1991 s 23(1); and the Criminal Penalties etc (Increase) Order 1984, SI 1984/447, art 2(2), Sch 2). If it appears to the Secretary of State that there has been a change in the value of money since the relevant date, he may by order substitute for the sums for the time being specified in the Magistrates' Courts Act 1980 Sch 4 para 1 Table (as amended) such other sum or sums as appear to him justified by the change: s 143(1) (substituted by the Criminal Justice Act 1982 s 48(1)(a)); Magistrates' Courts Act 1980 s 143(2)(e). As to the Secretary of State see PARA 530 note 8 ante. For the meaning of 'relevant date' see PARA 656 note 3 ante. As to the making of orders under s 143(1) (as substituted) see PARA 656 note 3 ante. At the date at which this volume states the law no such orders had been made.

10 *Ibid* Sch 4 para 2(1) (amended by the Criminal Justice Act 1982 s 77, Sch 14 para 59). In calculating the reduction required under the Magistrates' Courts Act 1980 Sch 4 para 2(1) (as amended) any fraction of a day must be left out of account and the maximum period must not be reduced to less than seven days: Sch 4 para 2(2) (amended by the Criminal Justice Act 1991 s 100, Sch 11 para 28). As to release on payment of the sum due and reduction of the period of imprisonment on part payment being made see PARAS 866-867 post.

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 852-877 Fines and Compensation

The Courts Act 2003 s 97, Sch 5 make provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings: see PARA 877A.

As to the mutual recognition of financial penalties see PARA 877B.

Provision is also made for the discharge of fines by means of unpaid work: see s 97, Sch 6; Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004, SI 2004/2196; Discharge of Fines by Unpaid Work (Issue of Summons) Regulations 2004, SI 2004/2197; Discharge of Fines by Unpaid Work (Pilot Schemes) Order 2004, SI 2004/2198 (amended by SI 2005/563, SI 2005/617, SI 2006/502, SI 2007/773, SI 2008/621).

A register is to be kept, in accordance with regulations, of sums which are, for the purposes of the Magistrates' Courts Act 1980, sums adjudged to be paid by a conviction or order of a magistrates' court: see Courts Act 2003 s 98; and CIVIL PROCEDURE vol 12 (2009) PARA 1147.

SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to the enforcement of fines see Pt 52.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(iv) Fines and Compensation/B. ENFORCEMENT SUBSEQUENT TO CONVICTION/(A) Distress, Imprisonment or Detention in Default/866. Release from custody.

### **866. Release from custody.**

Where imprisonment or other detention has been imposed on any person by the order of a magistrates' court<sup>1</sup> in default of payment of any sum adjudged to be paid by the conviction or order<sup>2</sup> of a magistrates' court or for want of sufficient distress to satisfy such a sum, then, on the payment of the sum, together with the costs and charges, if any, of the commitment and distress, the order ceases to have effect<sup>3</sup>. If the person has been committed to custody<sup>4</sup> he must be released unless he is in custody for some other cause<sup>5</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 As to the use of the term 'a sum adjudged to be paid by conviction or order of a magistrates' court' see PARA 675 note 23 ante.

3 Magistrates' Courts Act 1980 s 79(1). Where a magistrates' court issues a warrant of commitment for a default in paying a sum adjudged to be paid by a summary conviction, then on the discharge of the defaulter the governor or keeper of the prison or place of detention must send to the justices' chief executive for the court a certificate showing the dates of the defaulter's reception and discharge; Magistrates' Courts Rules 1981, SI 1981/552, r 63(2) (amended by SI 2001/610). As to warrants of commitment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1162. As to the issue of warrants of commitment see PARA 860 ante. As to the justices' chief executive see PARA 624 et seq ante.

4 For the meaning of 'commit to custody' see PARA 676 note 14 ante.

5 Magistrates' Courts Act 1980 s 79(1).

## **UPDATE**

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### **852-877 Fines and Compensation**

The Courts Act 2003 s 97, Sch 5 make provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings: see PARA 877A.

As to the mutual recognition of financial penalties see PARA 877B.

Provision is also made for the discharge of fines by means of unpaid work: see s 97, Sch 6; Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004, SI 2004/2196; Discharge of Fines by Unpaid Work (Issue of Summons) Regulations 2004, SI 2004/2197; Discharge of Fines by Unpaid Work (Pilot Schemes) Order 2004, SI 2004/2198 (amended by SI 2005/563, SI 2005/617, SI 2006/502, SI 2007/773, SI 2008/621).

A register is to be kept, in accordance with regulations, of sums which are, for the purposes of the Magistrates' Courts Act 1980, sums adjudged to be paid by a conviction or order of a magistrates' court: see Courts Act 2003 s 98; and CIVIL PROCEDURE vol 12 (2009) PARA 1147.

SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to the enforcement of fines see Pt 52.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(iv) Fines and Compensation/B. ENFORCEMENT SUBSEQUENT TO CONVICTION/(A) Distress, Imprisonment or Detention in Default/867. Reduction of detention.

### **867. Reduction of detention.**

Where, after a period of imprisonment or other detention has been imposed on any person in default of payment of any sum adjudged to be paid by the conviction or order<sup>1</sup> of a magistrates' court<sup>2</sup> or for want of sufficient distress to satisfy such a sum, payment is made in accordance with the rules<sup>3</sup> of part of the sum, the period of detention is reduced by such number of days as bears to the total number of days in that period less one day the same proportion as the amount so paid bears to so much of the said sum, and the costs and charges of any distress levied to satisfy that sum, as was due at the time the period of detention was imposed<sup>4</sup>.

<sup>1</sup> As to the use of the term 'a sum adjudged to be paid by conviction or order of a magistrates' court' see PARA 675 note 23 ante.

<sup>2</sup> For the meaning of 'magistrates' court' see PARA 583 ante.

<sup>3</sup> I.e. the rules made under the Magistrates' Courts Act 1980 s 144 (as amended) (see PARA 588 ante): s 150(1).

<sup>4</sup> Ibid s 79(2). In calculating the reduction required under s 79(2) any fraction of a day is left out of account: s 79(3). As to the application of s 79(2) to distress for rates see s 151.

## **UPDATE**

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### **852-877 Fines and Compensation**

The Courts Act 2003 s 97, Sch 5 make provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings: see PARA 877A.

As to the mutual recognition of financial penalties see PARA 877B.

Provision is also made for the discharge of fines by means of unpaid work: see s 97, Sch 6; Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004, SI 2004/2196; Discharge of Fines by Unpaid Work (Issue of Summons) Regulations 2004, SI 2004/2197; Discharge of Fines by Unpaid Work (Pilot Schemes) Order 2004, SI 2004/2198 (amended by SI 2005/563, SI 2005/617, SI 2006/502, SI 2007/773, SI 2008/621).

A register is to be kept, in accordance with regulations, of sums which are, for the purposes of the Magistrates' Courts Act 1980, sums adjudged to be paid by a conviction or order of a magistrates' court: see Courts Act 2003 s 98; and CIVIL PROCEDURE vol 12 (2009) PARA 1147.



SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to the enforcement of fines see Pt 52.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(iv) Fines and Compensation/B. ENFORCEMENT SUBSEQUENT TO CONVICTION/(A) Distress, Imprisonment or Detention in Default/868. Detention in police station.

### **868. Detention in police station.**

A magistrates' court<sup>1</sup> that has power to commit to prison a person in default of payment of a sum adjudged to be paid by a summary conviction<sup>2</sup>, or would have that power but for the statutory provisions relating to the restrictions on the power to impose imprisonment for default<sup>3</sup> or the supervision of pending payments<sup>4</sup>, may issue a warrant<sup>5</sup> for his detention in a police station, and, if it does so, must not, where it has power to commit him to prison, exercise that power<sup>6</sup>. Such a warrant authorises the person executing it to arrest the defaulter and take him to a police station<sup>7</sup>, and requires the officer in charge of the station to detain him there until 8 o'clock in the morning of the day following that on which he is arrested, or, if he is arrested between midnight and 8 o'clock in the morning, until 8 o'clock in the morning of the day on which he is arrested<sup>8</sup>. The officer may release the defaulter at any time within four hours before 8 o'clock in the morning if the officer thinks it expedient to do so in order to enable him to go to his work or for any other reason appearing to the officer to be sufficient<sup>9</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 As to the use of the term 'a sum adjudged to be paid by conviction or order of a magistrates' court' see PARA 675 note 23 ante.

3 Ie but for the Magistrates' Courts Act 1980 s 82 (as amended): see PARAS 854, 862 ante.

4 Ie but for ibid s 88 (as amended): see PARA 874 post.

5 For the form of warrant for detention in a police station see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Form 58 (amended SI 1986/1333; and SI 2001/166). See PARA 505 note 12 ante.

6 Magistrates' Courts Act 1980 s 136(1). Section 136 (as amended) has effect in relation to a person aged 18 or over but less than 21 as if references in it to prison were references to detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 108 (prospectively repealed) (detention of persons aged 18-20 for default) (see PARA 854 ante; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 11); Magistrates' Courts Act 1980 s 136(4) (added by the Criminal Justice Act 1982 Sch 14 para 58; and amended by the Criminal Justice Act 1991 Sch 8 para 6; and the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 78). As from a day to be appointed the Magistrates' Courts Act 1980 s 136(4) (as added and amended) is repealed: see the Criminal Justice and Court Services Act 2000 Sch 7 Pt II paras 58, 68, Sch 8. At the date at which this volume states the law no such day had been appointed.

7 Magistrates' Courts Act 1980 s 136(2)(a) (substituted by the Access to Justice Act 1999 s 95(2)). See note 6 supra.

8 Magistrates' Courts Act 1980 s 136(2)(b). See note 6 supra.

9 Ibid s 136(3). See note 6 supra.

## **UPDATE**

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### **852-877 Fines and Compensation**

The Courts Act 2003 s 97, Sch 5 make provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings: see PARA 877A.

As to the mutual recognition of financial penalties see PARA 877B.

Provision is also made for the discharge of fines by means of unpaid work: see s 97, Sch 6; Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004, SI 2004/2196; Discharge of Fines by Unpaid Work (Issue of Summons) Regulations 2004, SI 2004/2197; Discharge of Fines by Unpaid Work (Pilot Schemes) Order 2004, SI 2004/2198 (amended by SI 2005/563, SI 2005/617, SI 2006/502, SI 2007/773, SI 2008/621).

A register is to be kept, in accordance with regulations, of sums which are, for the purposes of the Magistrates' Courts Act 1980, sums adjudged to be paid by a conviction or order of a magistrates' court: see Courts Act 2003 s 98; and CIVIL PROCEDURE vol 12 (2009) PARA 1147.

SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to the enforcement of fines see Pt 52.

### **868 Detention in police station**

NOTE 5--SI 1981/553 Sch 2 Form 58 revoked: SI 2003/1236.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(iv) Fines and Compensation/B. ENFORCEMENT SUBSEQUENT TO CONVICTION/(B) Enforcement by High Court or County Court/869. Procedure.

## **(B) ENFORCEMENT BY HIGH COURT OR COUNTY COURT**

### **869. Procedure.**

Payment of a sum adjudged to be paid by a conviction<sup>1</sup> of a magistrates' court<sup>2</sup> may be enforced by the High Court<sup>3</sup> or a county court<sup>4</sup>, otherwise than by issue of a writ of fieri facias<sup>5</sup> or other process against goods or by imprisonment or attachment of earnings<sup>6</sup>, as if the sum were due to the justices' chief executive<sup>7</sup> for the magistrates' court in pursuance of a judgment or order of the High Court or county court, as the case may be<sup>8</sup>. The justices' chief executive must not take proceedings to recover any sum adjudged to be paid by a conviction of the magistrates' court from any person unless there has been an inquiry<sup>9</sup> into that person's means and he appeared to the court to have sufficient means to pay the sum<sup>10</sup>.

Where a magistrates' court has, or is treated by any enactment<sup>11</sup> as having, adjudged a company by a conviction to pay a sum<sup>12</sup>, and the court has issued a warrant of distress<sup>13</sup> for the purpose of levying the sum<sup>14</sup> and it appears on the return to the warrant that the money and goods of the company are insufficient to satisfy the sum with the costs and charges of levying the sum<sup>15</sup>, the justices' chief executive for the court may make an application in relation to the company<sup>16</sup> for administration or winding up<sup>17</sup>.

- 1 As to the use of the term 'a sum adjudged to be paid by conviction or order of a magistrates' court' see PARA 675 note 23 ante.
- 2 For the meaning of 'magistrates' court' see PARA 583 ante.
- 3 For the meaning of 'High Court' see PARA 513 note 8 ante.
- 4 For the meaning of 'county court' see PARA 573 note 2 ante.
- 5 As to writs of fieri facias see CIVIL PROCEDURE vol 12 (2009) PARA 1266.
- 6 As to the attachment of earnings see PARAS 837-847 ante.
- 7 As to the justices' chief executive see PARA 624 et seq ante.
- 8 Magistrates' Courts Act 1980 s 87(1) (amended by the Access to Justice Act 1999 s 90(1), Sch 13 paras 95, 105(1), (2)).
- 9 le under the Magistrates' Courts Act 1980 s 82 (as amended): see PARAS 854, 862 ante.
- 10 Ibid s 87(3) (amended by the Criminal Procedure and Investigations Act 1996 s 50; and the Access to Justice Act 1999 Sch 13 paras 95, 105(1), (3)). Any expenses incurred by a justices' chief executive in recovering any such sum are treated for the purposes of the Justices of the Peace Act 1997 Pt VI (ss 40-50) (as amended) as expenses of the magistrates' courts committee: Magistrates' Courts Act 1980 s 87(4) (amended by the Justices of the Peace Act 1997 s 73(2), Sch 5 para 19(3)(c); and the Access to Justice Act 1999 Sch 13 paras 95, 105(1), (4)). As to magistrates' courts committees see PARA 612 et seq post.
- 11 For the meaning of 'enactment' see PARA 505 note 16 ante.
- 12 Magistrates' Courts Act 1980 s 87A(1)(a) (s 87A added by the Criminal Justice Act 1988 s 62(1)).
- 13 le under the Magistrates' Courts Act 1980 s 76(1) (as amended): see PARA 860 ante. As to warrants of distress see DISTRESS vol 13 (2007 Reissue) PARA 1134 et seq.
- 14 Ibid s 87A(1)(b) (as added: see note 12 supra).
- 15 Ibid s 87A(1)(c) (as added: see note 12 supra).
- 16 le under the Insolvency Act 1986 s 9 or s 124 (both as amended): see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.
- 17 Magistrates' Courts Act 1980 s 87A(1) (as added (see note 12 supra); and amended by the Access to Justice Act 1999 Sch 13 paras 95, 106(1), (2)). Any expenses incurred under the Magistrates' Courts Act 1980 s 87A(1) (as added and amended) by a justices' chief executive are treated for the purposes of the Justices of the Peace Act 1997 Pt VI (as amended) as expenses of the magistrates' courts committee: Magistrates' Courts Act 1980 s 87A(2) (as added (see note 12 supra); and amended by the Justices of the Peace Act 1997 Sch 5 para 19(3)(d); and the Access to Justice Act 1999 Sch 13 paras 95, 106(1), (3)).

## **UPDATE**

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### **852-877 Fines and Compensation**

The Courts Act 2003 s 97, Sch 5 make provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings: see PARA 877A.

As to the mutual recognition of financial penalties see PARA 877B.

Provision is also made for the discharge of fines by means of unpaid work: see s 97, Sch 6; Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004, SI 2004/2196; Discharge of Fines by Unpaid Work (Issue of Summons) Regulations 2004, SI 2004/2197; Discharge of Fines by Unpaid Work (Pilot Schemes) Order 2004, SI 2004/2198 (amended by SI 2005/563, SI 2005/617, SI 2006/502, SI 2007/773, SI 2008/621).

A register is to be kept, in accordance with regulations, of sums which are, for the purposes of the Magistrates' Courts Act 1980, sums adjudged to be paid by a conviction or order of a magistrates' court: see Courts Act 2003 s 98; and CIVIL PROCEDURE VOL 12 (2009) PARA 1147.

SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to the enforcement of fines see Pt 52.

## **869 Procedure**

TEXT AND NOTES--1980 Act s 87(1A), (3A) added: SI 2006/1737.

NOTE 10--Magistrates' Court Act 1980 s 87(4) repealed: Courts Act 2003 Sch 8 para 223(3), Sch 10.

NOTE 16--Now under the Insolvency Act 1986 s 124 or Sch B1 para 12: 1980 Act s 87A(1) (amended by the Enterprise Act 2002 Sch 17 para 2).

TEXT AND NOTE 17--Reference to justices' chief executive now to designated officer: 1980 Act s 87A(1) (amended by the 2003 Act Sch 8 para 224(2)).

NOTE 17--1980 Act s 87A(2) repealed: 2003 Act Sch 8 para 224(3), Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(iv) Fines and Compensation/B. ENFORCEMENT SUBSEQUENT TO CONVICTION/(C) Enforcement of Fines Imposed on Young Offenders/870. Enforcement of fines imposed on young offenders.

## **(C) ENFORCEMENT OF FINES IMPOSED ON YOUNG OFFENDERS**

### **870. Enforcement of fines imposed on young offenders.**

Where a magistrates' court<sup>1</sup> would, but for the restriction<sup>2</sup> on imposing imprisonment on persons under 18, have power to commit to prison a person under the age of 18 for a default consisting in failure to pay, or want of sufficient distress to satisfy, a sum adjudged to be paid by a conviction<sup>3</sup>, the magistrates' court may make<sup>4</sup>: (1) an order requiring the defaulter's parent or guardian<sup>5</sup> to enter into a recognisance<sup>6</sup> to ensure that the defaulter pays so much of that sum as remains unpaid<sup>7</sup>; or (2) an order directing so much of that sum as remains unpaid to be paid by the defaulter's parent or guardian instead of by the defaulter<sup>8</sup>. Such an order must not be made in respect of a defaulter in pursuance of head (1) above, unless the parent or guardian in question consents<sup>9</sup>, or in pursuance of head (2) above, unless the magistrates' court is satisfied in all the circumstances that it is reasonable to make the order<sup>10</sup>.

Neither an attendance centre order<sup>11</sup> nor any order under head (1) or head (2) above may be made by a magistrates' court in consequence of a default of a person under the age of 18 years consisting in failure to pay, or want of sufficient distress to satisfy, a sum adjudged to be paid by a conviction unless the magistrates' court has since the conviction inquired into the defaulter's means in his presence on at least one occasion<sup>12</sup>. An order under head (1) or head

(2) above must not be made by a magistrates' court unless the court is satisfied that the defaulter has, or has had since the date on which the sum in question was adjudged to be paid, the means to pay the sum or any instalment of it on which he has defaulted, and refuses or neglects or, as the case may be, has refused or neglected, to pay it<sup>13</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 le under the Powers of Criminal Courts (Sentencing) Act 2000 s 89 (prospectively amended): see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1397.

3 For these purposes, 'sum adjudged to be paid by a conviction' means any fine, costs, compensation or other sum adjudged to be paid by an order made on a finding of guilt, including a compensation order made under the Powers of Criminal Courts (Sentencing) Act 2000 s 130 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 375 et seq, 388, 481); Magistrates' Courts Act 1980 s 81(8) (definition amended by the Children Act 1989 s 108(7), Sch 15; and the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 67(1), (4)).

4 Magistrates' Courts Act 1980 s 81(1) (amended by the Criminal Justice Act 1991 s 68(d), Sch 8 para 6(2); and the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 67(1), (2)).

5 For these purposes, 'guardian', in relation to a person under the age of 18, means a person appointed, according to law, to be his guardian, or by order of a court of competent jurisdiction: Magistrates' Courts Act 1980 s 81(8) (definition amended by the Children Act 1989 Sch 15; and the Criminal Justice Act 1991 Sch 8 para 6(2)).

6 As to recognisances see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq.

7 Magistrates' Courts Act 1980 s 81(1)(a).

8 Ibid s 81(1)(b). An order under s 81(1)(b) may be made against a parent or guardian who, having been required to attend, has failed to do so: s 81(5). However, save as aforesaid, an order under s 81(1)(b) must not be made without giving the parent or guardian an opportunity of being heard: s 81(5). A parent or guardian may appeal to the Crown Court against an order under s 81(1)(b): s 81(6). Any sum ordered under s 81(1)(b) to be paid by a parent or guardian may be recovered from him in like manner as if the order had been made on the conviction of the parent or guardian of an offence: s 81(7). For the meaning of 'Crown Court' see PARA 508 note 9 ante.

9 Ibid s 81(2)(a).

10 Ibid s 81(2)(b).

11 le an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 60(1) (as amended): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 267 et seq.

12 Magistrates' Courts Act 1980 s 81(3) (amended by the Criminal Justice Act 1991 Sch 8 para 6(2); the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 67(1), (3)).

13 Magistrates' Courts Act 1980 s 81(4).

## **UPDATE**

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### **852-877 Fines and Compensation**

The Courts Act 2003 s 97, Sch 5 make provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings: see PARA 877A.

As to the mutual recognition of financial penalties see PARA 877B.

Provision is also made for the discharge of fines by means of unpaid work: see s 97, Sch 6; Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004, SI 2004/2196; Discharge of Fines by Unpaid Work (Issue of Summons) Regulations 2004, SI 2004/2197; Discharge of Fines by Unpaid Work (Pilot Schemes) Order 2004, SI 2004/2198 (amended by SI 2005/563, SI 2005/617, SI 2006/502, SI 2007/773, SI 2008/621).

A register is to be kept, in accordance with regulations, of sums which are, for the purposes of the Magistrates' Courts Act 1980, sums adjudged to be paid by a conviction or order of a magistrates' court: see Courts Act 2003 s 98; and CIVIL PROCEDURE vol 12 (2009) PARA 1147.

SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to the enforcement of fines see Pt 52.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(iv) Fines and Compensation/B. ENFORCEMENT SUBSEQUENT TO CONVICTION/(D) Community Service Orders, Curfew Orders and Disqualification/871. Community service order in respect of fine.

## (D) COMMUNITY SERVICE ORDERS, CURFEW ORDERS AND DISQUALIFICATION

### **871. Community service order in respect of fine.**

In any case where a magistrates' court<sup>1</sup> has power<sup>2</sup> to issue a warrant of commitment<sup>3</sup> for default in paying a sum adjudged to be paid by a conviction<sup>4</sup> of a magistrates' court<sup>5</sup>, or would, but for the restrictions<sup>6</sup> on custodial sentences for persons under 21<sup>7</sup>, have power to issue a warrant for default<sup>8</sup>, it may make a community service order<sup>9</sup> in respect of the person in default instead of issuing a warrant of commitment or, as the case may be, proceeding under the statutory provisions<sup>10</sup> relating to the enforcement of fines imposed on young offenders<sup>11</sup>. Where a magistrates' court has power to make a community service order it may, if it thinks it expedient to do so, postpone the making of the order until such time and on such conditions, if any, as it thinks just<sup>12</sup>.

The maximum period of community service varies according to the amount due<sup>13</sup>. A magistrates' court must not make a community service order: (1) in respect of a person who is under 16<sup>14</sup>; or (2) unless the magistrates' court has been notified by the Secretary of State that arrangements for implementing such orders are available in the relevant area<sup>15</sup> and the notice has not been withdrawn<sup>16</sup>. Where an order has been made for default in paying any sum: (a) on payment of the whole sum to any person authorised to receive it, the order ceases to have effect<sup>17</sup>; (b) on payment of a part of that sum to any such person, the total number of hours or days to which the order relates is reduced proportionately<sup>18</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 Ie under the Magistrates' Courts Act 1980 Pt III (ss 75-96A) (as amended).

3 As to warrants of commitment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1162.

4 Ie other than a sum ordered to be paid under the Criminal Justice Act 1988 s 71 (as amended) or the Drug Trafficking Act 1994 s 2 (as amended). As to the use of the term 'a sum adjudged to be paid by conviction or order of a magistrates' court' see PARA 675 note 23 ante.

5 Crime (Sentence) Act 1997 s 35(1)(a) (amended by the Crime and Disorder Act 1998 s 119, Sch 8 para 132(1)).

6 le under the Powers of Criminal Courts (Sentencing) Act 2000 s 89 (prospectively amended): see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1397.

7 As from a day to be appointed the reference in the text to persons under 21 is repealed and replaced with a reference to persons under 18: see the Criminal Justice and Court Services Act 2000 s 74, Sch 7 Pt II paras 135, 139(a). At the date at which this volume states the law no such day had been appointed.

8 Crime (Sentence) Act 1997 s 35(1)(b) (amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 184(1), (2)).

9 Crime (Sentence) Act 1997 s 35(2)(a) (which is expressed to be subject to s 35(4), (5) (as substituted) (see *infra*), s 35(6) (see the text to note 13 *infra*), s 35(10) (as amended) (see the text to note 14 *infra*) and s 35(11) (see the text and notes 15-16 *infra*): s 35(2)(a) (amended by the Crime and Disorder Act 1998 s 106, Sch 7 para 50(1))). As to the application of the statutory provisions relating to community service orders under the Powers of Criminal Courts (Sentencing) Act 2000 (see PARA 795 *ante*) to community service orders under the Crime (Sentence) Act 1997 s 35 (as amended) see s 35(4), (5) (both substituted by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 184(1), (3)); and the Crime (Sentence) Act 1997 s 35(14). The Powers of Criminal Courts (Sentencing) Act 2000 s 35 (as amended) (restrictions on imposing community sentences) (see PARA 790 *ante*) and s 36 (as amended) (pre-sentence reports) (see PARA 791 *ante*) do not apply in relation to community service orders under the Crime (Sentence) Act 1997 s 35(2)(a) (as amended): s 35(12A) (added by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 184(1), (5)).

10 le under the Magistrates' Courts Act 1980 s 81 (as amended): see PARA 870 *ante*.

11 Crime (Sentence) Act 1997 s 35(2).

12 *Ibid* s 35(3).

13 See *ibid* s 35(6). Where the amount does not exceed £200, the maximum period of community service is 40 hours; where the amount exceeds £200 but does not exceed £500, the maximum period of community service is 60 hours; and where the amount exceeds £500, the maximum period of community service is 100 hours: s 35(6). The Secretary of State may by order direct that s 35(6) is to be amended by substituting for any number of hours or days there specified such number of hours or days as may be specified in the order: s 35(14). The power to make an order under s 35 (as amended) is exercisable by statutory instrument: s 35(15). However, no such order may be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament: s 35(15). At the date at which this volume states the law no orders had been made under s 35(14). As to the Secretary of State see PARA 530 note 8 *ante*.

14 *Ibid* s 35(10) (amended by the Crime and Disorder Act 1998 Sch 7 para 50(6)).

15 For these purposes, 'the relevant area' means the area proposed to be specified in the community service order: Crime (Sentence) Act 1997 s 35(12).

16 *Ibid* s 35(11).

17 *Ibid* s 35(13)(a).

18 *Ibid* s 35(13)(b). The total number is so reduced if it is reduced by such number of complete hours or days as bears to the total number the proportion most nearly approximating to, without exceeding, the proportion which the part paid bears to the whole sum: s 35(13).

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 852-877 Fines and Compensation

The Courts Act 2003 s 97, Sch 5 make provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings: see PARA 877A.

As to the mutual recognition of financial penalties see PARA 877B.

Provision is also made for the discharge of fines by means of unpaid work: see s 97, Sch 6; Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004, SI 2004/2196; Discharge of Fines by Unpaid Work (Issue of Summons) Regulations 2004, SI 2004/2197; Discharge of Fines by Unpaid Work (Pilot Schemes) Order 2004, SI 2004/2198 (amended by SI 2005/563, SI 2005/617, SI 2006/502, SI 2007/773, SI 2008/621).

A register is to be kept, in accordance with regulations, of sums which are, for the purposes of the Magistrates' Courts Act 1980, sums adjudged to be paid by a conviction or order of a magistrates' court: see Courts Act 2003 s 98; and CIVIL PROCEDURE VOL 12 (2009) PARA 1147.

SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to the enforcement of fines see Pt 52.

## **871 Community service order in respect of fine**

NOTES--References to Crime (Sentence) Act 1997 should be to the Crime (Sentences) Act 1997.

NOTE 4--Also, other than a sum ordered to be paid under the Proceeds of Crime Act 2002 s 6: Crime (Sentences) Act 1997 s 35(1)(a) (amended by the 2002 Act Sch 11 para 32(2)). Criminal Justice Act 1988 s 71 repealed: Proceeds of Crime Act 2002 Sch 11, PARAS 1, 17(1), (2)(a), Sch 12. Drug Trafficking Act 1994 s 2 repealed: 2002 Act Sch 11, PARAS 1, 25(1), (2)(a), Sch 12.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(iv) Fines and Compensation/B. ENFORCEMENT SUBSEQUENT TO CONVICTION/(D) Community Service Orders, Curfew Orders and Disqualification/872. Curfew orders.

## **872. Curfew orders.**

In any case where a magistrates' court<sup>1</sup> has power<sup>2</sup> to issue a warrant of commitment<sup>3</sup> for default in paying a sum adjudged to be paid by a conviction<sup>4</sup> of a magistrates' court<sup>5</sup>, or would, but for the restrictions<sup>6</sup> on custodial sentences for persons under 21<sup>7</sup>, have power to issue a warrant for default<sup>8</sup>, it may make a curfew order<sup>9</sup> in respect of the person in default instead of issuing a warrant of commitment or, as the case may be, proceeding under the statutory provisions<sup>10</sup> relating to the enforcement of fines imposed on young offenders<sup>11</sup>. Where a magistrates' court has power to make a curfew order, it may, if it thinks it expedient to do so, postpone the making of the order until such time and on such conditions, if any, as it thinks just<sup>12</sup>.

The maximum period for a curfew order varies according to the amount due<sup>13</sup>. A magistrates' court must not make a curfew order: (1) in respect of a person who is under 16<sup>14</sup>; or (2) unless the magistrates' court has been notified by the Secretary of State that arrangements for implementing such orders are available in the relevant area<sup>15</sup> and the notice has not been withdrawn<sup>16</sup>. Where such an order has been made for default in paying any sum then on payment of the whole sum to any person authorised to receive it, the order ceases to have effect<sup>17</sup>, and on payment of a part of that sum to any such person, the total number of hours or days to which the order relates are reduced proportionately<sup>18</sup>.



- 1 For the meaning of 'magistrates' court' see PARA 583 ante.
- 2 le under the Magistrates' Courts Act 1980 Pt III (ss 75-96A) (as amended).
- 3 As to warrants of commitment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1162.
- 4 le other than a sum ordered to be paid under the Criminal Justice Act 1988 s 71 (as amended) or the Drug Trafficking Act 1994 s 2 (as amended). As to the use of the term 'a sum adjudged to be paid by conviction or order of a magistrates' court' see PARA 675 note 23 ante.
- 5 Crime (Sentence) Act 1997 s 35(1)(a) (amended by the Crime and Disorder Act 1998 s 119, Sch 8 para 132(1)).
- 6 le under the Powers of Criminal Courts (Sentencing) Act 2000 s 89 (prospectively amended): see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1397.
- 7 As from a day to be appointed the reference in the text to persons under 21 is repealed and replaced with a reference to persons under 18: see the Criminal Justice and Court Services Act 2000 s 74, Sch 7 Pt II paras 135, 139(a). At the date at which this volume states the law no such day had been appointed.
- 8 Crime (Sentence) Act 1997 s 35(1)(b) (amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 184(1), (2)).
- 9 Crime (Sentence) Act 1997 s 35(2)(b) (which is expressed to be subject to s 35(7), (8) (as substituted) (see infra), s 35(9) (see the text to note 13 infra), s 35(10) (as amended) (see the text to note 14 infra) and s 35(11) (See the text and notes 15-16 infra): s 35(2)(b)). As to the application of the statutory provisions relating to curfew orders under the Powers of Criminal Courts (Sentencing) Act 2000 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 231 et seq) to curfew orders under the Crime (Sentence) Act 1997 s 35 (as amended) see s 35(7), (8) (substituted by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 184(1), (4)). The Powers of Criminal Courts (Sentencing) Act 2000 s 35 (as amended) (restrictions on imposing community sentences) (see PARA 790 ante) and s 36 (as amended) (pre-sentence reports) (see PARA 791 ante) do not apply in relation to a curfew order under the Crime (Sentence) Act 1997 s 35(2)(b): s 35(12A) (added by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 184(1), (5)).
- 10 le under the Magistrates' Courts Act 1980 s 81 (as amended): see PARA 870 ante.
- 11 Crime (Sentence) Act 1997 s 35(2).
- 12 Ibid s 35(3).
- 13 See ibid s 35(9). Where the amount does not exceed £200, the maximum period of curfew is 20 days; where the amount exceeds £200 but does not exceed £500, the maximum period of curfew is 30 days; where the amount exceeds £500 but does not exceed £1,000, the maximum period of curfew is 60 days; where the amount exceeds £1,000 but does not exceed £2,500, the maximum period of curfew is 90 days; and where the amount exceeds £2,500, the maximum period of curfew is 180 days: s 35(9). The Secretary of State may by order direct that s 35(6) is to be amended by substituting for any number of hours or days there specified such number of hours or days as may be specified in the order: s 35(14). The power to make an order under s 35 (as amended) is exercisable by statutory instrument: s 35(15). However, no such order may be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament: s 35(15). At the date at which this volume states the law no orders had been made under s 35(14). As to the Secretary of State see PARA 530 note 8 ante.
- 14 Ibid s 35(10) (amended by the Crime and Disorder Act 1998 Sch 7 para 50(6)).
- 15 For these purposes, 'the relevant area' means, the area in which the place proposed to be specified in the curfew order is situated: Crime (Sentence) Act 1997 s 35(12).
- 16 Ibid s 35(11).
- 17 Ibid s 35(13)(a).
- 18 Ibid s 35(13)(b). The total number is so reduced if it is reduced by such number of complete hours or days as bears to the total number the proportion most nearly approximating to, without exceeding, the proportion which the part paid bears to the whole sum: s 35(13).

## UPDATE

## **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

## **852-877 Fines and Compensation**

The Courts Act 2003 s 97, Sch 5 make provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings: see PARA 877A.

As to the mutual recognition of financial penalties see PARA 877B.

Provision is also made for the discharge of fines by means of unpaid work: see s 97, Sch 6; Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004, SI 2004/2196; Discharge of Fines by Unpaid Work (Issue of Summons) Regulations 2004, SI 2004/2197; Discharge of Fines by Unpaid Work (Pilot Schemes) Order 2004, SI 2004/2198 (amended by SI 2005/563, SI 2005/617, SI 2006/502, SI 2007/773, SI 2008/621).

A register is to be kept, in accordance with regulations, of sums which are, for the purposes of the Magistrates' Courts Act 1980, sums adjudged to be paid by a conviction or order of a magistrates' court: see Courts Act 2003 s 98; and CIVIL PROCEDURE vol 12 (2009) PARA 1147.

SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to the enforcement of fines see Pt 52.

## **872 Curfew orders**

NOTES--References to the Crime (Sentence) Act 1997 should be to the Crime (Sentences) Act 1997.

NOTE 4--Also, other than a sum ordered to be paid under the Proceeds of Crime Act 2002 s 6: 1997 Act s 35(1)(b) (amended by the 2002 Act Sch 11 para 32(2)). Criminal Justice Act 1988 s 71 repealed: Proceeds of Crime Act 2002 Sch 11, paras 1, 17(1), (2) (a), Sch 12. Drug Trafficking Act 1994 s 2 repealed: 2002 Act Sch 11, paras 1, 25(1), (2)(a), Sch 12.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(iv) Fines and Compensation/B. ENFORCEMENT SUBSEQUENT TO CONVICTION/(D) Community Service Orders, Curfew Orders and Disqualification/873. Disqualification for holding or obtaining a driving licence.

## **873. Disqualification for holding or obtaining a driving licence.**

Where a magistrates' court<sup>1</sup> has power<sup>2</sup> to issue a warrant of commitment<sup>3</sup> for default in paying a sum adjudged to be paid by a conviction<sup>4</sup> of a magistrates' court<sup>5</sup>, or would, but for the restrictions<sup>6</sup> on custodial sentences for persons under 21<sup>7</sup>, have power to issue such a warrant for such default<sup>8</sup>, it may, instead of issuing a warrant of commitment or, as the case may be, proceeding under the statutory provisions relating to the enforcement of fines imposed on young offenders<sup>9</sup>, order the person in default to be disqualified, for such period not exceeding 12 months as it thinks fit, for holding or obtaining a driving licence<sup>10</sup>. However, a magistrates'

court must not make such an order unless the court has been notified by the Secretary of State that the power to make such orders is exercisable by the court and the notice has not been withdrawn<sup>11</sup>.

Where an order has been made for default in paying any sum then on payment of the whole sum to any person authorised to receive it, the order ceases to have effect<sup>12</sup>, and on payment of a part of that sum to any such person, the number of weeks or months to which the order relates are reduced proportionately<sup>13</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 *Ie* under the Magistrates' Courts Act 1980 Pt III (ss 75-96A) (as amended).

3 As to warrants of commitment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1162.

4 *Ie* other than a sum ordered to be paid under the Criminal Justice Act 1988 s 71 (as amended) or the Drug Trafficking Act 1994 s 2 (as amended). As to the use of the term 'a sum adjudged to be paid by conviction or order of a magistrates' court' see PARA 675 note 23 ante.

5 Crime (Sentence) Act 1997 s 40(1)(a).

6 *Ie* under the Powers of Criminal Courts (Sentencing) Act 2000 s 89 (prospectively amended): see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1397.

7 As from a day to be appointed the reference in the text to persons under 21 is repealed and replaced with a reference to persons under 18: see the Criminal Justice and Court Services Act 2000 s 74, Sch 7 Pt II paras 135, 140. At the date at which this volume states the law no such day had been appointed.

8 Crime (Sentence) Act 1997 s 40(1)(b) (amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 185(1), (2)).

9 *Ie* under the Magistrates' Courts Act 1980 s 81 (as amended): see PARA 870 ante.

10 Crime (Sentence) Act 1997 s 40(2). The Secretary of State may by order made by statutory instrument vary the period specified in s 40(2): s 40(5). However, no such order may be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament: s 40(5). At the date at which this volume states the law no orders had been made under s 40(2). As to the Secretary of State see PARA 530 note 8 ante.

A magistrates' court which makes an order under s 40 (as amended) disqualifying a person for holding or obtaining a driving licence must require him to produce any such licence held by him together with its counterpart: s 40(6) (s 40(6), (7) substituted by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9, PARA 185(1), (3)). For these purposes, 'driving licence' means a licence to drive a motor vehicle granted under the Road Traffic Act 1988 Pt III (ss 87-109) (as amended) (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARAS 444-486); Crime (Sentence) Act 1997 s 40(7) (as so substituted). For these purposes, 'counterpart', in relation to a driving licence, has the meaning given in relation to such a licence by the Road Traffic Act 1988 s 108(1) (definition as added) (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 415); Crime (Sentence) Act 1997 s 40(7) (as so substituted).

11 *Ibid* s 40(3).

12 *Ibid* s 40(4)(a).

13 *Ibid* s 40(4)(b). The total number is so reduced if it is reduced by such number of complete weeks or months as bears to the total number the proportion most nearly approximating to, without exceeding, the proportion which the part paid bears to the whole sum: s 40(4).

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

## **852-877 Fines and Compensation**

The Courts Act 2003 s 97, Sch 5 make provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings: see PARA 877A.

As to the mutual recognition of financial penalties see PARA 877B.

Provision is also made for the discharge of fines by means of unpaid work: see s 97, Sch 6; Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004, SI 2004/2196; Discharge of Fines by Unpaid Work (Issue of Summons) Regulations 2004, SI 2004/2197; Discharge of Fines by Unpaid Work (Pilot Schemes) Order 2004, SI 2004/2198 (amended by SI 2005/563, SI 2005/617, SI 2006/502, SI 2007/773, SI 2008/621).

A register is to be kept, in accordance with regulations, of sums which are, for the purposes of the Magistrates' Courts Act 1980, sums adjudged to be paid by a conviction or order of a magistrates' court: see Courts Act 2003 s 98; and CIVIL PROCEDURE vol 12 (2009) PARA 1147.

SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to the enforcement of fines see Pt 52.

## **873 Disqualification for holding or obtaining a driving licence**

NOTES--References to the Crime (Sentence) Act 1997 should be to the Crime (Sentences) Act 1997.

NOTE 4--Also, other than a sum ordered to be paid under the Proceeds of Crime Act 2002 s 6: 1997 Act s 40(1)(a) (amended by the 2002 Act Sch 11 para 32(2)). Criminal Justice Act 1988 s 71 repealed: 2002 Act Sch 11 para 17(2)(a), Sch 12. Drug Trafficking Act 1994 s 2 repealed: 2002 Act Sch 11 para 25(2)(a), Sch 12.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(iv) Fines and Compensation/B. ENFORCEMENT SUBSEQUENT TO CONVICTION/(E) Supervision Orders/874. Supervision in respect of fine.

## **(E) SUPERVISION ORDERS**

### **874. Supervision in respect of fine.**

Where any person is adjudged to pay a sum by a summary conviction<sup>1</sup> and the convicting magistrates' court<sup>2</sup> does not commit him to prison forthwith in default of payment, the court may, either on the occasion of the conviction or on a subsequent occasion, order him to be placed under the supervision of such person as the court may from time to time appoint<sup>3</sup>. An order placing a person under supervision in respect of any sum remains in force so long as he remains liable to pay the sum or any part of it unless the order ceases to have effect or is discharged<sup>4</sup>. An order ceases to have effect on the making of a transfer of fine order<sup>5</sup> with respect to the sum adjudged to be paid and may be discharged by the court that made it, without prejudice in either case to the making of a new order<sup>6</sup>.

<sup>1</sup> As to the use of the term 'a sum adjudged to be paid by conviction or order of a magistrates' court' see PARA 675 note 23 ante.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 Magistrates' Courts Act 1980 s 88(1). An entry of the order must be made either in the register or in a separate record kept for the purpose: see PARA 628 ante. Unless an order under s 88(1) is made in the offender's presence, the justices' chief executive for the court making the order must deliver to the offender, or serve on him by post, notice in writing of the order: Magistrates' Courts Rules 1981, SI 1981/552, r 56(1) (amended by SI 2001/610). It is the duty of any person for the time being appointed under the Magistrates' Courts Act 1980 s 88(1) to advise and befriend the offender with a view to inducing him to pay the sum adjudged to be paid and thereby avoid committal to custody and to give any information required by a magistrates' court about the offender's conduct and means: Magistrates' Courts Rules 1981, SI 1981/552, r 56(2). No fee is chargeable for any warrant or order under the Magistrates' Courts Act 1980 s 88 (as amended): see s 137(2), Sch 6 Pt II. For the form of notice of supervision orders see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Form 62 (as amended). See PARA 505 note 12 ante. As to the justices' chief executive see PARA 624 et seq ante.

4 Magistrates' Courts Act 1980 s 88(2).

5 le under ibid s 89 (as amended): see PARA 856 ante.

6 Ibid s 88(3).

## **UPDATE**

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### **852-877 Fines and Compensation**

The Courts Act 2003 s 97, Sch 5 make provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings: see PARA 877A.

As to the mutual recognition of financial penalties see PARA 877B.

Provision is also made for the discharge of fines by means of unpaid work: see s 97, Sch 6; Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004, SI 2004/2196; Discharge of Fines by Unpaid Work (Issue of Summons) Regulations 2004, SI 2004/2197; Discharge of Fines by Unpaid Work (Pilot Schemes) Order 2004, SI 2004/2198 (amended by SI 2005/563, SI 2005/617, SI 2006/502, SI 2007/773, SI 2008/621).

A register is to be kept, in accordance with regulations, of sums which are, for the purposes of the Magistrates' Courts Act 1980, sums adjudged to be paid by a conviction or order of a magistrates' court: see Courts Act 2003 s 98; and CIVIL PROCEDURE vol 12 (2009) PARA 1147.

SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to the enforcement of fines see Pt 52.

### **874 Supervision in respect of fine**

NOTE 3--SI 1981/553 Sch 2 Form 62 revoked: SI 2003/1236. Magistrates' Courts Act 1980 s 137, Sch 6 repealed: Courts Act 2003 Sch 8 para 242, Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(iv) Fines and Compensation/B. ENFORCEMENT SUBSEQUENT TO CONVICTION/(E) Supervision Orders/875. Supervision of persons under 21.

### **875. Supervision of persons under 21.**

Where a person under 21 has been adjudged to pay a sum by a summary conviction<sup>1</sup> and the convicting magistrates' court<sup>2</sup> does not commit him to detention<sup>3</sup> forthwith in default of payment, the court must not commit him to such detention in default of payment of the sum, or for want of sufficient distress to satisfy the sum, unless he has been placed under supervision in respect of the sum or the court is satisfied that it is undesirable or impracticable to place him under supervision<sup>4</sup>. Where a magistrates' court, being so satisfied, commits a person under 21 years old to such detention without an order for the supervision of payment<sup>5</sup> having been made, the magistrates' court must state the grounds on which it is so satisfied in the warrant of commitment<sup>6</sup>.

1 As to the use of the term 'a sum adjudged to be paid by conviction or order of a magistrates' court' see PARA 675 note 23 ante.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 I.e. under the Powers of Criminal Courts (Sentencing) Act 2000 s 108 (prospectively repealed) (detention of persons aged 18-20 for default): see PARA 854 ante; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 11.

4 Magistrates' Courts Act 1980 s 88(4) (amended by the Criminal Justice Act 1982 s 77, Sch 14 para 53(a)(i), (ii); and by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 68). As from a day to be appointed the Magistrates' Courts Act 1980 s 88(4) (as amended) is further amended to provide that where a person under 21 has been adjudged to pay a sum by a summary conviction and the convicting magistrates' court does not commit him to prison forthwith in default of payment, the court must not commit him to prison in default of payment of the sum, or for want of sufficient distress to satisfy the sum, unless he has been placed under supervision in respect of the sum or the court is satisfied that it is undesirable or impracticable to place him under supervision: s 88(4) (prospectively amended by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 Pt II paras 58, 64(a)). At the date at which this volume states the law no such day had been appointed. No fee is chargeable for any warrant or order under the Magistrates' Courts Act 1980 s 88 (as amended): see s 137(2), Sch 6 Pt II.

5 I.e. and order under *ibid* s 88 (as amended).

6 *Ibid* s 88(5) (amended by the Criminal Justice Act 1982 Sch 14 para 53(b)). As from a day to be appointed the Magistrates' Courts Act 1980 s 88(5) (as amended) is further amended to provide that where a magistrates' court, being so satisfied, commits a person under 21 to prison without an order for the supervision of payment under s 88 (as amended) having been made, the magistrates' court must state the grounds on which it is so satisfied in the warrant of commitment: s 88(5) (prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 Pt II paras 58, 64(b)). At the date at which this volume states the law no such day had been appointed. As to warrants of commitment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1162.

## **UPDATE**

### **772-897 Deferral of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### **852-877 Fines and Compensation**

The Courts Act 2003 s 97, Sch 5 make provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings: see PARA 877A.

As to the mutual recognition of financial penalties see PARA 877B.

Provision is also made for the discharge of fines by means of unpaid work: see s 97, Sch 6; Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004, SI 2004/2196; Discharge of Fines by Unpaid Work (Issue of Summons) Regulations 2004, SI 2004/2197; Discharge of Fines by Unpaid Work (Pilot Schemes) Order 2004, SI 2004/2198 (amended by SI 2005/563, SI 2005/617, SI 2006/502, SI 2007/773, SI 2008/621).

A register is to be kept, in accordance with regulations, of sums which are, for the purposes of the Magistrates' Courts Act 1980, sums adjudged to be paid by a conviction or order of a magistrates' court: see Courts Act 2003 s 98; and CIVIL PROCEDURE VOL 12 (2009) PARA 1147.

SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to the enforcement of fines see Pt 52.

## **875 Supervision of persons under 21**

NOTE 4--Magistrates' Courts Act 1980 s 137, Sch 6 repealed: Courts Act 2003 Sch 8 para 242, Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(iv) Fines and Compensation/B. ENFORCEMENT SUBSEQUENT TO CONVICTION/(E) Supervision Orders/876. Committal after supervision.

## **876. Committal after supervision.**

Where an order placing a person under supervision with respect to a sum<sup>1</sup> is in force, a magistrates' court<sup>2</sup> must not commit him to prison in default of payment of the sum, or for want of sufficient distress to satisfy the sum, unless the court has before committing him taken such steps as may be reasonably practicable to obtain from the person appointed for his supervision an oral or written report on the offender's conduct and means and has considered any report so obtained<sup>3</sup>.

1 As to orders placing persons under supervision with respect to a sum see PARAS 874-875 ante.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 Magistrates' Courts Act 1980 s 88(6). This is in addition, in a case where an inquiry is required by s 82 (as amended) (see PARAS 854, 862 ante), to that inquiry: s 88(6). No fee is chargeable for any warrant or order under the Magistrates' Courts Act 1980 s 88 (as amended): see s 137(2), Sch 6 Pt II.

## **UPDATE**

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

## 852-877 Fines and Compensation

The Courts Act 2003 s 97, Sch 5 make provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings: see PARA 877A.

As to the mutual recognition of financial penalties see PARA 877B.

Provision is also made for the discharge of fines by means of unpaid work: see s 97, Sch 6; Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004, SI 2004/2196; Discharge of Fines by Unpaid Work (Issue of Summons) Regulations 2004, SI 2004/2197; Discharge of Fines by Unpaid Work (Pilot Schemes) Order 2004, SI 2004/2198 (amended by SI 2005/563, SI 2005/617, SI 2006/502, SI 2007/773, SI 2008/621).

A register is to be kept, in accordance with regulations, of sums which are, for the purposes of the Magistrates' Courts Act 1980, sums adjudged to be paid by a conviction or order of a magistrates' court: see Courts Act 2003 s 98; and CIVIL PROCEDURE vol 12 (2009) PARA 1147.

SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to the enforcement of fines see Pt 52.

## 876 Committal after supervision

NOTE 3--Magistrates' Courts Act 1980 s 137, Sch 6 repealed: Courts Act 2003 Sch 8 para 242, Sch 10.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(iv) Fines and Compensation/B. ENFORCEMENT SUBSEQUENT TO CONVICTION/ (F) Deductions from Income Support/877. Recovery of fines etc by deductions from income support.

### (F) DEDUCTIONS FROM INCOME SUPPORT

#### 877. Recovery of fines etc by deductions from income support.

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> provide that where a fine<sup>3</sup> has been imposed on an offender by a magistrates' court, or a sum is required to be paid by a compensation order<sup>4</sup> which has been made against an offender by a magistrates' court, and, in either case, the offender is entitled to income support<sup>5</sup> or a jobseeker's allowance<sup>6</sup>: (1) the court<sup>7</sup> may apply to the Secretary of State asking him to deduct sums from any amounts payable to the offender by way of that benefit, in order to secure the payment of any sum which is or forms part of the fine or compensation<sup>8</sup>; and (2) the Secretary of State may deduct sums from any such amounts and pay them to the magistrates' court towards satisfaction of any such sum<sup>9</sup>. The regulations may include provision:

374 (a) that, before making an application, the magistrates' court must make an inquiry as to the offender's means<sup>10</sup>;

375 (b) allowing or requiring adjudication as regards an application, and provision as to appeals to appeal tribunals constituted<sup>11</sup> and decisions<sup>12</sup> under the Social Security Act 1998<sup>13</sup>;

376 (c) as to the circumstances and manner in which and the times at which sums are to be deducted and paid<sup>14</sup>;



- 377 (d) as to the calculation of such sums<sup>15</sup>;
- 378 (e) as to the circumstances in which the Secretary of State is to cease making deductions<sup>16</sup>;
- 379 (f) requiring the Secretary of State to notify the offender, in a prescribed manner and at any prescribed time, of the total amount of sums deducted up to the time of notification<sup>17</sup>; and
- 380 (g) that, where the whole amount to which the application relates has been paid, the court must give notice of that fact to the Secretary of State<sup>18</sup>.

1 As to the Secretary of State see PARA 530 note 8 ante.

2 Any power of the Secretary of State to make rules, regulations or orders under the Criminal Justice Act 1991 Pt I (ss 16-30) (as amended) is exercisable by statutory instrument, and includes power to make different provision for different cases or classes of case: Criminal Justice Act 1991 s 30(1) (amended by the Criminal Justice Act 1993 s 79(14), Sch 6 Pt I). Statutory instruments containing any rules, regulations or orders under the Criminal Justice Act 1991 Pt I (as amended) are subject to annulment in pursuance of a resolution of either House of Parliament: Criminal Justice Act 1991 s 30(2) (amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(4), Sch 12 Pt I). As to the regulations made under the Criminal Justice Act 1991 s 24 (as amended) see the Fines (Deductions from Income Support) Regulations 1992, SI 1992/2182 (amended by SI 1993/495; SI 1996/2344; SI 1997/827; SI 1998/5630).

3 For these purposes, the reference to a fine having been imposed by a magistrates' court includes a reference to a fine being treated, by virtue of the Powers of Criminal Courts (Sentencing) Act 2000 s 140 (prospectively amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 160), as having been so imposed: Criminal Justice Act 1991 s 24(3)(a) (amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 136). For these purposes, 'fine' includes: (1) a penalty imposed under the Vehicle Excise and Registration Act 1994 s 29 (as amended) (penalty for using or keeping unlicensed vehicle) (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARAS 777, 778) or s 37 (as amended) (penalty for not paying duty chargeable at a higher rate) (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 785) or the Customs and Excise Management Act 1979 s 102(3)(aa) (as added and amended) (penalties imposed for certain offences in relation to vehicle excise licences) (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 623); (2) an amount ordered to be paid, in addition to any penalty so imposed, under the Vehicle Excise and Registration Act 1994 ss 30, 36 (as amended) or s 38 (liability to additional duty) (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARAS 778, 786); (3) an amount ordered to be paid by way of costs which is, by virtue of the Administration of Justice Act 1970 s 41 (as amended) (recovery of costs and compensation) (para 878 post), treated as having been adjudged to be paid on a conviction by a magistrates' court: Criminal Justice Act 1991 s 24(4) (definition amended by the Vehicle Excise and Registration Act 1994 s 63, Sch 3 para 30). For the meaning of 'magistrates' court' see PARA 583 ante. As to the imposition of fines by magistrates' courts see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 139 et seq.

4 For these purposes, the reference to a sum being required to be paid by a compensation order which has been made by a magistrates' court includes a reference to a sum which is required to be paid by such an order being treated, by virtue of the Administration of Justice Act 1970 s 41 (as amended) (recovery of costs and compensation) (para 878 post), as having been adjudged to be paid on conviction by such a court: Criminal Justice Act 1991 s 24(3)(b). As to compensation orders see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 375 et seq, 388, 481.

5 For these purposes, 'income support' means income support within the meaning of the Social Security Act 1986 (see SOCIAL SECURITY AND PENSIONS), either alone or together with any incapacity benefit or retirement pension which is paid by means of the same instrument of payment: Criminal Justice Act 1991 s 24(4) (definition amended by the Social Security (Incapacity for Work) Act 1994 s 11(1), Sch 1 para 55; the Jobseekers Act 1995 s 41(5), Sch 3; and the Welfare Reform and Pensions Act 1999 s 70, Sch 8 Pt III para 27). As to income support, incapacity benefit and retirement pensions see SOCIAL SECURITY AND PENSIONS.

6 Criminal Justice Act 1991 s 24(1) (amended by the Jobseekers Act 1995 s 41(4), Sch 2 para 21(2)). As to jobseekers' allowances see SOCIAL SECURITY AND PENSIONS.

7 For these purposes, the reference to 'the court' includes a reference to a court to which the function in the Criminal Justice Act 1991 s 24(1)(a) (as amended) has been transferred by virtue of a transfer of fine order under the Magistrates' Courts Act 1980 s 89(1) or s 89(3) (see PARA 856 ante) or s 90(1)(a) (see PARA 857 ante) or under the Criminal Procedure (Scotland) Act 1995 s 222(1)(a), (b) (analogous provision as respects Scotland) and a reference to a court to which that function has been remitted by virtue of the Criminal Procedure (Scotland) Act 1975 s 196(2) (as amended) (enforcement of fine imposed by High Court of Justiciary): Criminal Justice Act 1991 s 24(3)(c) (added by the Criminal Justice and Public Order Act 1994 s 47(3); and amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 s 5, Sch 4 para 80(2)(c)).

- 8 Criminal Justice Act 1991 s 24(1)(a) (amended by the Jobseekers Act 1995 Sch 2 para 21(2)).
- 9 Criminal Justice Act 1991 s 24(1)(b).
- 10 Ibid s 24(2)(a). See note 2 supra.
- 11 Ie appeal tribunals constituted under the Social Security Act 1998 Pt I Ch I (ss 1-7) (as amended): see SOCIAL SECURITY AND PENSIONS.
- 12 Ie decisions under ibid s 9 (revision of decisions) (see SOCIAL SECURITY AND PENSIONS) or s 10 (as amended) (decision superseding earlier decisions) (see SOCIAL SECURITY AND PENSIONS).
- 13 Criminal Justice Act 1991 s 24(2)(b) (amended by the Social Security Act 1998 s 86(1), Sch 7 para 55). See note 2 supra. See generally SOCIAL SECURITY AND PENSIONS.
- 14 Criminal Justice Act 1991 s 24(2)(c). See note 2 supra.
- 15 Ibid s 24(2)(d). This may include provision to secure that amounts payable to the offender by way of income support or a jobseeker's allowance do not fall below prescribed figures: s 24(2)(d) (amended by the Jobseekers Act 1995 s 41(4), Sch 2 para 21(4)). For these purposes, 'prescribed' means prescribed by regulations made by the Secretary of State: Criminal Justice Act 1991 s 24(4). See note 2 supra.
- 16 Ibid s 24(2)(e). See note 2 supra.
- 17 Ibid s 24(2)(f). See note 2 supra.
- 18 Ibid s 24(2)(g). See note 2 supra.

## **UPDATE**

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### **852-877 Fines and Compensation**

The Courts Act 2003 s 97, Sch 5 make provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings: see PARA 877A.

As to the mutual recognition of financial penalties see PARA 877B.

Provision is also made for the discharge of fines by means of unpaid work: see s 97, Sch 6; Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004, SI 2004/2196; Discharge of Fines by Unpaid Work (Issue of Summons) Regulations 2004, SI 2004/2197; Discharge of Fines by Unpaid Work (Pilot Schemes) Order 2004, SI 2004/2198 (amended by SI 2005/563, SI 2005/617, SI 2006/502, SI 2007/773, SI 2008/621).

A register is to be kept, in accordance with regulations, of sums which are, for the purposes of the Magistrates' Courts Act 1980, sums adjudged to be paid by a conviction or order of a magistrates' court: see Courts Act 2003 s 98; and CIVIL PROCEDURE vol 12 (2009) PARA 1147.

SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to the enforcement of fines see Pt 52.

### **877 Recovery of fines etc by deductions from income support**

TEXT AND NOTES 1-9--These provisions also apply where the offender is entitled to state pension credit: Criminal Justice Act 1991 s 24(1) (amended by the State Pension Credit Act 2002 Sch 2 para 31). These provisions also apply to an income-related employment and support allowance: 1991 Act s 24(1) (amended by Welfare Reform Act 2007 Sch 3 para 8(a)). 'Income-related employment and support allowance' means an income-related allowance under the Welfare Reform Act 2007 Pt 1 (ss 1-29): 1991 Act s 24(4) (amended by 2007 Act Sch 3 para 8(b)) (Sch 3 para 8 in force for regulation-making purposes on 18 March 2008 and for remaining purposes on 27 October 2008: SI 2008/787).

NOTE 2--SI 1992/2182 further amended: SI 2002/1397, SI 2003/1360, SI 2004/2889, SI 2008/1554.

NOTE 3--The 1991 Act s 24 applies in relation to a surcharge imposed under the Criminal Justice Act 2003 s 161A (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 158) as if any reference in the 1991 Act s 24(1) or (3) to a fine included a reference to a surcharge: s 24(4) (added by Domestic Violence, Crime and Victims Act 2004 Sch 10 para 30).

TEXT AND NOTES 10-18--Also, head (aa) provision that the court may require the offender to provide prescribed information in connection with an application: 1991 Act s 24(2) (aa) (added by Courts Act 2003 s 96(2)).

An offender who fails to provide information required by the court by virtue of the 1991 Act s 24(2)(aa) commits an offence: s 24(2A) (s 24(2A)-(2C) added by the 2003 Act s 96(3)). An offender commits an offence if, in providing information required by the court by virtue of the 1991 Act s 24(2)(aa), he (1) makes a statement which he knows to be false in a material particular, (2) recklessly provides a statement which is false in a material particular, or (3) knowingly fails to disclose any material fact: s 24(2B). A person guilty of an offence under s 24(2A) or (2B) is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 24(2C).

NOTE 15--Also, by way of state pension credit: 1991 Act s 24(2)(d) (amended by 2002 Act Sch 2 para 31). Also, by way of an income-related employment and support allowance: 1991 Act s 24(2)(d) (amended by 2007 Act Sch 3 para 8(a)).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(iv) Fines and Compensation/B. ENFORCEMENT SUBSEQUENT TO CONVICTION/ (F) Deductions from Income Support/877A. Collection of fines and other sums imposed on conviction.

### **877A. Collection of fines and other sums imposed on conviction.**

The Lord Chancellor has power to introduce the arrangements for the collection of fines as pilot schemes in specified local justice areas: see Courts Act 2003 s 97(5), (6); Collection of Fines (Pilot Scheme) and Discharge of Fines by Unpaid Work (Pilot Schemes) (Amendment) Order 2006, SI 2006/502; and Fines Collection Regulations 2006, SI 2006/501. A permanent scheme may be introduced after completion of the pilots: 2003 Act s 97(7). As to the final scheme see Sch 5 (amended by Criminal Justice and Immigration Act 2008 ss 41, 80(1); and SI 2006/1737); the Collection of Fines (Final Scheme) Order 2006, SI 2006/1737; and the Fines Collection (Disclosure of Information) (Prescribed Benefits) Regulations 2008, SI 2008/3242.

### **UPDATE**

## **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

## **852-877 Fines and Compensation**

The Courts Act 2003 s 97, Sch 5 make provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings: see PARA 877A.

As to the mutual recognition of financial penalties see PARA 877B.

Provision is also made for the discharge of fines by means of unpaid work: see s 97, Sch 6; Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004, SI 2004/2196; Discharge of Fines by Unpaid Work (Issue of Summons) Regulations 2004, SI 2004/2197; Discharge of Fines by Unpaid Work (Pilot Schemes) Order 2004, SI 2004/2198 (amended by SI 2005/563, SI 2005/617, SI 2006/502, SI 2007/773, SI 2008/621).

A register is to be kept, in accordance with regulations, of sums which are, for the purposes of the Magistrates' Courts Act 1980, sums adjudged to be paid by a conviction or order of a magistrates' court: see Courts Act 2003 s 98; and CIVIL PROCEDURE vol 12 (2009) PARA 1147.

SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to the enforcement of fines see Pt 52.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(iv) Fines and Compensation/B. ENFORCEMENT SUBSEQUENT TO CONVICTION/ (F) Deductions from Income Support/877B. Recognition of financial penalties.

### **877B. Recognition of financial penalties.**

The Criminal Justice and Immigration Act 2008 ss 80-92, Schs 18, 19 give effect to the European Council Framework Decision on the mutual recognition of financial penalties. For transitional provision see Criminal Justice and Immigration Act 2008 Sch 27 para 29.

#### **1. Requests to other member States**

The designated officer for a magistrates' court may issue a certificate requesting enforcement under the Framework Decision on financial penalties where (1) a person is required to pay a financial penalty, (2) the penalty is not paid in full within the time allowed for payment, (3) there is no appeal outstanding in relation to the penalty, (4) the Courts Act 2003 Sch 5 (see PARA 877A) does not apply in relation to the enforcement of the penalty, and (5) it appears to the designated officer that the person is normally resident in, or has property or income in, a member State other than the United Kingdom: Criminal Justice and Immigration Act 2008 s 80(2). 'The Framework Decision on financial penalties' means the Framework Decision of the Council of the European Union made on 24 February 2005 on the application of the principle of mutual recognition to financial penalties (2005/214/JHA): Criminal Justice and Immigration Act 2008 s 92(1). See further s 92(2), (3). For the meaning of 'financial penalty' see s 80(5). For the purposes of head (3), there is no appeal outstanding in relation to a financial penalty if (a) no

appeal has been brought in relation to the imposition of the financial penalty within the time allowed for making such an appeal, or (b) such an appeal has been brought but the proceedings on appeal have been concluded: s 80(3). Where the person required to pay the financial penalty is a body corporate, head (5) applies as if the reference to the person being normally resident in a member State other than the United Kingdom were a reference to the person having its registered office in a member State other than the United Kingdom: s 80(4).

Provision is made with respect to the procedure on the issue of a certificate: see Criminal Justice and Immigration Act 2008 s 81.

For further provision see Criminal Justice and Immigration Act 2008 s 91, Schs 18, 19.

## **2. Requests from other member States**

The Criminal Justice and Immigration Act 2008 s 84 applies where (1) the competent authority or central authority of a member State other than the United Kingdom gives the Lord Chancellor (a) a certificate requesting enforcement under the Framework Decision on financial penalties (see PARA 877B.1), and (b) the decision, or a certified copy of the decision, requiring payment of the financial penalty to which the certificate relates, and (2) the financial penalty is suitable for enforcement in England and Wales (see s 91(1)): s 84(1). For the meaning of 'competent authority' and 'central authority' see Criminal Justice and Immigration Act 2008 s 92(1). If the certificate states that the person required to pay the financial penalty is normally resident in England and Wales, the Lord Chancellor must give the documents mentioned in head (1) to the designated officer for the local justice area in which it appears that the person is normally resident: s 84(2). Otherwise, the Lord Chancellor must give the documents mentioned in head (1) to the designated officer for such local justice area as appears appropriate: s 84(3). Where the Lord Chancellor acts under s 84(2) or (3), the Lord Chancellor must also give the designated officer a notice (i) stating whether the Lord Chancellor thinks that any of the grounds for refusal apply (see s 91(2)), and (ii) giving reasons for that opinion: s 84(4). Where the person required to pay the financial penalty is a body corporate, s 84(2) applies as if the reference to the local justice area in which it appears that the person is normally resident were a reference to the local justice area in which it appears that the person has its registered office: s 84(5). Where (A) the competent authority or central authority of a member State other than the United Kingdom gives the central authority for Scotland the documents mentioned in head (1), and (B) without taking any action to enforce the financial penalty in Scotland, the central authority for Scotland gives the documents to the Lord Chancellor, s 84 applies as if the competent authority or central authority of the other member State gave the documents to the Lord Chancellor: s 84(6). For the meaning of 'central authority for Scotland' see s 92(1).

Provision is made with respect to the procedure on receipt of a certificate by a designated officer: see Criminal Justice and Immigration Act 2008 s 85.

The Criminal Justice and Immigration Act 2008 Sch 18 specifies when a financial penalty is suitable for enforcement in England and Wales for the purposes of s 84(1): Criminal Justice and Immigration Act 2008 s 91(1). The Criminal Justice and Immigration Act 2008 Sch 19 specifies the grounds for refusal to enforce financial penalties: s 91(2). The Lord Chancellor may by order make further provision for or in connection with giving effect to the Framework Decision on financial penalties: see s 91(3), (4).

## **UPDATE**

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

## **852-877 Fines and Compensation**

The Courts Act 2003 s 97, Sch 5 make provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings: see PARA 877A.

As to the mutual recognition of financial penalties see PARA 877B.

Provision is also made for the discharge of fines by means of unpaid work: see s 97, Sch 6; Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004, SI 2004/2196; Discharge of Fines by Unpaid Work (Issue of Summons) Regulations 2004, SI 2004/2197; Discharge of Fines by Unpaid Work (Pilot Schemes) Order 2004, SI 2004/2198 (amended by SI 2005/563, SI 2005/617, SI 2006/502, SI 2007/773, SI 2008/621).

A register is to be kept, in accordance with regulations, of sums which are, for the purposes of the Magistrates' Courts Act 1980, sums adjudged to be paid by a conviction or order of a magistrates' court: see Courts Act 2003 s 98; and CIVIL PROCEDURE vol 12 (2009) PARA 1147.

SI 1981/552 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). As to the enforcement of fines see Pt 52.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(v) Costs and Fees/878. Recovery of costs from accused, defendant, informant or complainant.

## **(v) Costs and Fees**

### **878. Recovery of costs from accused, defendant, informant or complainant.**

Where a magistrates' court<sup>1</sup> on the summary trial of an information, makes an order as to costs to be paid by the accused to the prosecutor<sup>2</sup>, or where a magistrates' court makes an order as to costs to be paid by an accused in respect of any costs unnecessarily or improperly incurred<sup>3</sup> or where an appellant to the Crown Court<sup>4</sup> against conviction or sentence by a magistrates' court abandons his appeal and the magistrates' court orders him to pay costs to the other party to the appeal<sup>5</sup>, the costs must be treated, for the purposes of collection and enforcement, as if they had been adjudged to be paid on a conviction by a magistrates' court<sup>6</sup>.

Where a magistrates' court makes an order as to costs to be paid by the prosecutor in respect of any costs unnecessarily or improperly incurred<sup>7</sup> or where an appellant to the Crown Court from a magistrates' court, otherwise than against conviction or sentence, abandons his appeal and the magistrates' court orders him to pay costs to the other party to the appeal<sup>8</sup>, the costs are enforceable as if the order were for the payment of money recoverable summarily as a civil debt<sup>9</sup>.

Similarly, costs ordered to be paid by a defendant or complainant on the hearing of a complaint<sup>10</sup> are enforceable as a civil debt<sup>11</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 Administration of Justice Act 1970 s 41 (as amended), Sch 9 Pt I para 1.

3 Ibid Sch 9 Pt I para 1A (added by the Prosecution of Offences Act 1985 s 31(5), Sch 1 Pt II). The reference in the text to any costs unnecessarily or improperly incurred is a reference to costs so incurred under regulations made under the Prosecution of Offences Act 1985 s 19(1): see PARA 770 ante. As to the regulations that have been made under s 19(1) see the Costs in Criminal Cases (General) Regulations 1986, SI 1986/1335 (amended by SI 1991/789; SI 1992/323; SI 1992/2956; SI 1999/2096; SI 2000/2094; and SI 2001/611).

4 For the meaning of 'Crown Court' see PARA 508 note 9 ante.

5 Administration of Justice Act 1970 Sch 9 Pt I para 2 (as amended by the Courts Act 1971 s 56(1), Sch 8 para 60). As to abandonment of appeal see PARA 897 post.

6 See the Administration of Justice Act 1970 s 41(1). The reference to conviction by a magistrates' court is to: (1) where the order is made by a magistrates' court, that court; and (2) in any other case, such magistrates' court as may be specified in the order: s 41(1). As to the power to award costs see generally para 767 et seq ante. As to the enforcement of costs payable by parties see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2100.

7 Ibid Sch 9 Pt II para 13 (substituted by the Prosecution of Offences Act 1985 Sch 1 Pt II para 7(7)). The reference in the text to any costs unnecessarily or improperly incurred is a reference to costs so incurred under regulations made under the Prosecution of Offences Act 1985 s 19(1): see note 3 supra.

8 Administration of Justice Act 1970 Sch 9 Pt II para 14 (amended by the Courts Act 1971 s 56(1), Sch 8 para 60).

9 See the Administration of Justice Act 1970 s 41(2). As to money recoverable as a civil debt see PARA 826 ante.

10 Ie under the Magistrates' Courts Act 1980 s 64 (as amended).

11 See ibid s 64(3). See also *R v Lord Mayor of London, ex p Boaler* [1893] 2 QB 146, DC. However, any costs awarded on a complaint for a maintenance order, or for the enforcement, variation, discharge or revival of such an order, against the person liable to make payments under the order are enforceable as a sum ordered to be paid by a magistrates' court maintenance order: Magistrates' Courts Act 1980 s 64(4) (substituted by the Family Law Reform Act 1987 s 33(1), Sch 2 para 81). The Magistrates' Courts Act 1980 s 64(3), (4) (as substituted) has effect subject to any other Act enabling a magistrates' court to order a successful party to pay the other party's costs: s 64(5). A prisoner is not in any case liable to pay the cost of his conveyance to prison: Prison Act 1952 s 21. For the meaning of 'magistrates' court maintenance order' see PARA 823 note 16 ante. As to the meaning of 'maintenance order' see PARA 820 note 3 ante.

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 878 Recovery of costs from accused, defendant, informant or complainant

NOTE 3--SI 1986/1335 further amended: SI 2005/617, SI 2008/2448, SI 2009/2720.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(v) Costs and Fees/879. Recovery of fees.

### 879. Recovery of fees.

Where there is no order by a magistrates' court for payment of costs<sup>1</sup>, the amount of the fees due to the justices' chief executive<sup>2</sup> is a simple debt, payment of which is to be enforced in a county court<sup>3</sup> against a prosecutor or informant who is personally liable<sup>4</sup>.

1 As to orders by magistrates' courts for the payment of costs see PARA 878 ante.

2 le in accordance with the Magistrates' Courts Act 1980 s 137, Sch 6 Pt I (as amended): see PARA 771 ante.

3 For the meaning of 'county court' see PARA 573 note 2 ante.

4 *Drew v Harris* (1849) 14 JP 26. Where the person sued is not personally liable and appears before the justices to give evidence but is not the prosecutor, payment cannot be enforced against him: *Reddish v Hitchinor* (1878) 48 LJMC 31.

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(vi) Allocation and Destination of Fines and Fees/880. Allocation of fines and fees.

## (vi) Allocation and Destination of Fines and Fees

### 880. Allocation of fines and fees.

A justices' chief executive<sup>1</sup> must apply moneys received by him on account of a sum adjudged to be paid by a summary conviction<sup>2</sup> as follows<sup>3</sup>: (1) in the first place in payment of any compensation adjudged by the conviction to be paid to any person<sup>4</sup>; (2) in the second place in payment of any costs so adjudged to be paid to the prosecutor<sup>5</sup>; and (3) the balance to the fund to which, or the person to whom, he is required<sup>6</sup> to pay the sum or any other enactment relating to the sum<sup>7</sup>.

1 As to the justices' chief executive see PARA 624 et seq ante.

2 As to the use of the term 'a sum adjudged to be paid by conviction or order of a magistrates' court' see PARA 675 note 23 ante.

3 Magistrates' Courts Act 1980 s 139 (amended by the Access to Justice Act 1999 s 90(1), Sch 13 paras 95, 115).

4 Magistrates' Courts Act 1980 s 139(a).

5 Ibid s 139(b).

6 le by virtue of the Justices of the Peace Act 1997 s 60 (as amended): see PARA 881 post.

7 Magistrates' Courts Act 1980 s 139(c) (amended by the Justices of the Peace Act 1997 s 73(2), Sch 5 para 19(4)).

## UPDATE



## **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### **880 Allocation of fines and fees**

TEXT AND NOTES--Also, head (1)(a) in the second place in payment to the fund mentioned in head (3) of surcharges imposed under the Criminal Justice Act 2003 s 161A (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 158): Magistrates' Courts Act 1980 s 139 (amended by the Domestic Violence, Crime and Victims Act 2004 Sch 10 para 11(a)). Under head (2) application of money is now in the third place: 1980 Act s 139 (amended by the 2004 Act Sch 10 para 11(b)).

TEXT AND NOTE 1--Now the designated officer for a magistrates' court: 1980 s 139 (amended by the Courts Act 2003 Sch 8 para 243).

NOTE 6--Reference is now to the 2003 Act s 38 (see PARA 881): 1980 Act s 139 (as amended: see TEXT AND NOTE 1).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(4) ENFORCEMENT OF SENTENCES AND ORDERS/(vi) Allocation and Destination of Fines and Fees/881. Application of receipts of justices' chief executive.

### **881. Application of receipts of justices' chief executive.**

Subject to the statutory provisions<sup>1</sup> relating to the disposal of sums adjudged to be paid by a summary conviction<sup>2</sup> and to the exceptions described below:

- 381 (1) all fines<sup>3</sup> imposed by a magistrates' court<sup>4</sup> and all sums which become payable by virtue of an order of a magistrates' court and are by any enactment<sup>5</sup> made applicable as fines so imposed or any class or description of such fines<sup>6</sup>; and
- 382 (2) all other sums received by a justices' chief executive<sup>7</sup> by reason of his office except sums to which a person other than the Lord Chancellor<sup>8</sup> is by law entitled and which are paid to that person<sup>9</sup>,

are paid to the Lord Chancellor<sup>10</sup>. The sums payable to the Lord Chancellor by virtue head (1) above do not include:

- 383 (a) any sums which by or in pursuance of any provision in the enactments relating to those sums are directed to be paid to the Commissioners of Customs and Excise<sup>11</sup> or to any officer of theirs or person appointed by them<sup>12</sup>;
- 384 (b) any sums which by or in pursuance of any such provision are directed to be paid to or for the benefit of the party aggrieved, party injured or a person described in similar terms<sup>13</sup>, or to or for the benefit of the family or relatives of a person described in any such terms or of a person dying in consequence of an act or event which constituted or was the occasion of an offence<sup>14</sup>;
- 385 (c) any sums which by or in pursuance of any such provision are directed to be applied in making good any default or repairing any damage or paying or reimbursing any expenses, other than those of the prosecution<sup>15</sup>; or

386 (d) any sums which are directed to be paid to any person by or in pursuance of any such provision referring in terms to awarding or reimbursing a loss, or to damages, compensation or satisfaction for loss, damage, injury or wrong<sup>16</sup>.

Head (2) above does not apply to sums received by a justices' chief executive on account of his salary or expenses as such, and any sum paid to the Lord Chancellor by virtue of that head are paid to him subject to its being repaid to any person establishing his title to it<sup>17</sup>.

1 le subject to Magistrates' Courts Act 1980 s 139(a), (b): see PARA 880 ante.

2 As to the use of the term 'a sum adjudged to be paid by conviction or order of a magistrates' court' see PARA 675 note 23 ante.

3 For these purposes, 'fine' includes: (1) any pecuniary penalty, pecuniary forfeiture or pecuniary compensation payable under a conviction; and (2) any non-pecuniary forfeiture on conviction by, or under any order of, a magistrates' court so far as the forfeiture is converted into or consists of money: Justices of the Peace Act 1997 s 60(6). For the meaning of 'magistrates' court' see PARA 583 ante.

4 For the purposes of ibid s 60 (as amended) anything done by the Crown Court on appeal from a magistrates' court is treated as done by the magistrates' court: s 60(5). Any fine or other sum the payment of which is enforceable by a magistrates' court by virtue of the Powers of Criminal Courts (Sentencing) Act 2000 s 140 (prospectively amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 160) is treated for the purposes of the Justices of the Peace Act 1997 s 60 (as amended) as having been imposed by a magistrates' court, or as being due under a recognisance forfeited by such a court: Powers of Criminal Courts (Sentencing) Act 2000 s 140(6).

5 For the meaning of 'enactment' see PARA 505 note 16 ante.

6 Justices of the Peace Act 1997 s 60(1)(a).

7 As to the justices' chief executive see PARA 624 et seq ante.

8 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

9 Justices of the Peace Act 1997 s 60(1)(b) (amended by the Access to Justice Act 1999 ss 91(2)(a), 106 Sch 15 Pt V).

10 Justices of the Peace Act 1997 s 60(1).

11 As to the Commissioners of Customs and Excise see further CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq.

12 Justices of the Peace Act 1997 s 60(2)(a).

13 Ibid s 60(2)(b)(i).

14 Ibid s 60(2)(b)(ii).

15 Ibid s 60(2)(c).

16 Ibid s 60(2)(d).

17 Ibid s 60(3) (amended by the Access to Justice Act 1999 s 91(2)(b)).

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 881 Application of receipts of justices' chief executive

TEXT AND NOTES--1997 Act repealed: Courts Act 2003 s 6(4), Sch 10. See now ss 38 (application of receipts of designated officer) and 39 (limits to requirements about application of receipts).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(5) APPEALS FROM MAGISTRATES' COURTS/(i) Right of Appeal/882. Types of appeal.

## **(5) APPEALS FROM MAGISTRATES' COURTS**

### **(i) Right of Appeal**

#### **882. Types of appeal.**

The right of appeal from any decision of a magistrates' court is statutory and there can be no appeal unless the right has been specifically conferred<sup>1</sup>.

Appeals from magistrates' courts may lie to the Crown Court<sup>2</sup>, or the Queen's Bench or Family Division of the High Court<sup>3</sup>. Appeals from magistrates' courts to the Crown Court are by way of rehearing<sup>4</sup>. Appeals from magistrates' courts to the High Court are by way of case stated or judicial review and are listed in the Administrative Court<sup>5</sup>. In certain family proceedings an appeal by case stated from a magistrates' court lies to a single judge as a general rule, and only to a Divisional Court of the Family Division if the court so directs<sup>6</sup>. A Divisional Court of the Family Division also hears appeals from a magistrates' court against the making of, or refusal to make, an order in adoption proceedings<sup>7</sup> or under the Children Act 1989<sup>8</sup>.

1 As regards the general principle that a right of appeal is the creature of statute see *Healey v Minister of Health* [1955] 1 QB 221 at 230, 232, [1954] 3 All ER 449 at 453-454, CA.

2 As to appeals to the Crown Court see PARA 883 post.

3 As to appeals to the High Court see PARA 884 et seq post.

4 See PARA 883 note 13 post.

5 See *Practice Note* [2000] 4 All ER 1071, sub nom *Practice Direction (Administrative Court: Establishment)* [2000] 1 WLR 1654.

6 See *Practice Direction* [1981] 1 All ER 400, sub nom *Practice Direction (Family Division: Case Stated)* [1981] 1 WLR 138.

7 See the Adoption Act 1976 s 63(2) (amended by the Health and Social Services and Social Security Adjudications Act 1983 s 30, Sch 10 Pt I).

8 See the Children Act 1989 s 94 (as amended); the Family Proceedings Rules 1991, SI 1991/1247, r 4.22; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 304.

## **UPDATE**

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(5) APPEALS FROM MAGISTRATES' COURTS/(ii) Appeal to the Crown Court/883. When the right of appeal lies; powers of Crown Court.

## (ii) Appeal to the Crown Court

### 883. When the right of appeal lies; powers of Crown Court.

There is a right of appeal to the Crown Court<sup>1</sup> in the following cases:

- 387 (1) by a person convicted by a magistrates' court<sup>2</sup>, against sentence<sup>3</sup>, if he pleaded guilty<sup>4</sup>;
- 388 (2) by a person convicted by a magistrates' court, against conviction or sentence, if he pleaded not guilty<sup>5</sup>;
- 389 (3) by a person sentenced by a magistrates' court for an offence in respect of which an order for conditional discharge has previously been made, against sentence<sup>6</sup>;
- 390 (4) from an order for contempt of a magistrates' court<sup>7</sup>;
- 391 (5) against an order made by a magistrates' court requiring a person to enter into recognisances to keep the peace or to be of good behaviour<sup>8</sup>; and
- 392 (6) against certain orders made by a magistrates' court and in some cases against the dismissal of an information, in proceedings under a number of enactments<sup>9</sup>.

A defendant may also appeal against conviction where the magistrates' court proceeded on an equivocal plea of guilty<sup>10</sup>. The Crown Court can investigate an apparently unequivocal plea of guilty where duress is alleged and remit the case for rehearing if satisfied the defendant should have pleaded not guilty<sup>11</sup>. The Crown Court must make a proper inquiry into what occurred in the magistrates' court before considering remitting the case to the magistrates' court<sup>12</sup>.

Appeal to the Crown Court is by way of rehearing<sup>13</sup>. On the termination of the hearing of an appeal the Crown Court:

- 393 (a) may confirm, reverse or vary any part of the decision appealed against, including a determination not to impose a separate penalty in respect of an offence<sup>14</sup>; or
- 394 (b) may remit the matter with its opinion thereon to the authority whose decision is appealed against<sup>15</sup>; or
- 395 (c) may make such other order in the matter as the court thinks just, and by such order exercise any power which the said authority might have exercised<sup>16</sup>.

1 It is not normally appropriate for an appeal against a sentence imposed by a magistrates' court to be made other than to the Crown Court: *Allen v West Yorkshire Probation Service* [2001] EWHC Admin 2, [2001] All ER (D) 44 (Jan), 165 JP 313, DC. For the meaning of 'Crown Court' see PARA 508 note 9 ante. As to the constitution and jurisdiction of the Crown Court see generally COURTS.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 For the purposes of the Magistrates' Courts Act 1980 s 108 (as amended), 'sentence' includes any order made on conviction by a magistrates' court, not being: (1) an order for the payment of costs (s 108(3)(b)); (2) an order under the Protection of Animals Act 1911 s 2 (which enables a court to order the destruction of an animal) (see ANIMALS vol 2 (2008) PARA 854) (Magistrates' Courts Act 1980 s 108(3)(c)); or (3) an order made in

pursuance of any enactment under which the court has no discretion as to the making of the order or its terms (s 108(3)(d)), and also includes a declaration of relevance under the Football Spectators Act 1989 (s 108(3) (amended by the Football Spectators Act 1989 s 23(3)(c); the Football (Offences and Disorder) Act 1999 s 7(2) (c); and the Football (Disorder) Act 2000 s 1, Sch 3)). As to the meaning of 'sentence' generally see PARA 659 note 25 ante.

Appeal against a sentence imposed by a magistrates' court is by way of appeal to the Crown Court, rather than the Divisional Court by way of case stated, in all but the most exceptional cases where the harshness of the sentence amounts to an excess of jurisdiction: *Tucker v DPP* [1992] 4 All ER 901. Similarly, appeal by way of judicial review is not normally appropriate: *Allen v West Yorkshire Probation Service* [2001] EWHC Admin 2, [2001] All ER (D) 44 (Jan), 165 JP 313, DC.

Appeal also lies against a sentence on breach or revocation of a curfew order, probation order, community service order, combination order and a drug treatment and testing order: see the Powers of Criminal Courts (Sentencing) Act 2000 ss 39, 43, 48, 51, 56, Sch 3 paras 4, 10.

4 Magistrates' Courts Act 1980 s 108(1)(a). The Powers of Criminal Courts (Sentencing) Act 2000 s 14 (under which a conviction of an offence for which an order for conditional or absolute discharge is made is deemed not to be a conviction except for certain purposes) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 41) does not prevent an appeal under the Magistrates' Courts Act 1980 s 108 (as amended), whether against conviction or otherwise: s 108(1A) (added by the Criminal Justice Act 1982 s 66(2); and amended by the Criminal Justice Act 1991 s 101(2), Sch 13; and the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 71). As to the meaning of 'enactment' see PARA 505 note 16 ante.

5 Magistrates' Courts Act 1980 s 108(1)(b).

6 See *ibid* s 108(2) (amended by the Crime and Disorder Act 1998 ss 119, 120(2), Sch 8 para 43, Sch 10).

7 See the Contempt of Court Act 1981 s 12(5) (amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 83).

8 See the Magistrates' Courts (Appeals from Binding Over Orders) Act 1956 s 1(1) (amended by the Courts Act 1971 s 56(2), Sch 9 Pt I; and the Magistrates' Courts Act 1980 s 154, Sch 9). See further COURTS; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1980, 1983. As to binding over orders see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq.

9 See eg the Agricultural Holdings Act 1986 s 19(2) (settlement of disputes as to distress) (see AGRICULTURAL LAND vol 1 (2008) PARA 348); the Companies Clauses Consolidation Act 1845 s 159 (as amended) (parties allowed to appeal to the Crown Court on giving security) (see COMPANIES vol 15 (2009) PARA 1823); the Compulsory Purchase Act 1965 s 12(3) (as amended) (unauthorised entry) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 644); the Copyright, Designs and Patents Act 1988 s 108(4)(a) (delivery up in criminal proceedings) (see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 440); the Customs and Excise Management Act 1979 s 147(3) (proceedings for an offence under the customs and excise Acts) (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 1200); the Highways Act 1980 s 315 (notice to be given of right of appeal), s 317(1), (2) (appeals to the Crown Court from decisions of magistrates' courts) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 914); the Land Drainage Act 1991 s 27(8) (appeal against notice to remedy condition of watercourse) (see WATER AND WATERWAYS vol 101 (2009) PARA 600); the Lands Clauses Consolidation Act 1845 s 146 (as amended) (parties allowed to appeal to Crown Court on giving security) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 512, 644); the Late Night Refreshment Houses Act 1969 s 7(3)(b) (as amended) (power of licensing authority to impose conditions after 11 pm) (see LICENSING AND GAMBLING vol 67 (2008) PARA 26); the London Government Act 1963 s 52, Sch 12 para 19(2) (licensing of public entertainments in Greater London) (see LICENSING AND GAMBLING vol 67 (2008) PARA 26); the Mental Health Act 1983 s 45(1) (hospital or guardianship order) (see MENTAL HEALTH vol 30(2) (Reissue) PARA 505); the Powers of Criminal Courts (Sentencing) Act 2000 s 150(8) (binding over of parent or guardian) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1288), s 61, Sch 5 para 2(6) (attendance centre order) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1359); the Protection of Animals Act 1911 s 14(1) (as amended) (appeals); the Public Health Act 1936 s 301 (as amended) (appeals) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 130); the Public Health Acts Amendment Act 1907 s 7(1) (as amended) (appeals) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 130).

10 See *R v Tottenham Justices, ex p Rubens, R v Middlesex Quarter Sessions, ex p Rubens* [1970] 1 All ER 879, [1970] 1 WLR 800, DC.

11 *R v Crown Court at Huntingdon, ex p Jordan* [1981] QB 857, [1981] 2 All ER 872, DC.

12 *R v Marylebone Justices, ex p Westminster City Council, R v Inner London Quarter Sessions, ex p Westminster City Council* [1971] 1 All ER 1025, [1971] 1 WLR 567, DC. For procedure where the defendant alleges his plea was equivocal see *R v Rochdale Justices, ex p Allwork* [1981] 3 All ER 434, [1981] Crim LR 719, DC; *R v Plymouth Justices, ex p Hart* [1986] QB 950, [1986] 2 All ER 452, DC. The Crown Court must be told

something which suggests the magistrates' court ought to have considered a change of plea: see *R v Coventry Crown Court, ex p Manson* (1978) 67 Cr App Rep 315, DC.

13 Supreme Court Act 1981 s 79(3); *Sirros v Moore* [1975] QB 118, [1974] 3 All ER 776, CA. The facts justifying a binding over order must be proved afresh: *Shaw v Hamilton* [1982] 2 All ER 718, [1982] 1 WLR 1308, DC. Although a rehearing, the Crown Court is not prevented from dealing with a procedural irregularity in the magistrates' court: *R v Teeside Magistrates' Court, ex p Bujnowski* (1996) 161 JP 302, [1997] Crim LR 51, DC. When considering an appeal against sentence, the question for the Crown Court is not whether the sentence passed by the magistrates' court was in their proper discretion to pass, but what sentence on all evidence was the right one: *R v Crown Court at Swindon, ex p Murray* (1997) 162 JP 36, DC. See also *R v Crown Court at Knutsford, ex p Jones, Gains and Garstang* (1985) 7 Cr App Rep (S) 448, DC.

An appellant who is represented by counsel need not appear in person: *R v Crown Court at Croydon, ex p Clair* [1986] 2 All ER 716, [1986] 1 WLR 746, DC. Where, as a result of a rehearing on appeal, any previous procedural unfairness has been cured, an appellant's alternative application for judicial review will be refused: *R v Peterborough Magistrates' Court, ex p Dowler* [1997] QB 911, [1997] 2 WLR 843, DC.

As to the documents which must be sent by the magistrates' court to the Crown Court see the Magistrates' Court Rules 1981, SI 1981/552, r 74 (amended by SI 1992/2072; SI 1993/1183; and by SI 2001/610).

14 Supreme Court Act 1981 s 48(2)(a) (amended by the Criminal Justice Act 1988 s 156). See note 16 infra.

15 Supreme Court Act 1981 s 48(2)(b). See note 16 infra. See also *Dutta v Westcott* [1987] QB 291, [1986] 3 All ER 381, DC.

16 Supreme Court Act 1981 s 48(2)(c). Section 48 (as amended) applies whether or not the appeal is against the whole of the decision: s 48(5). However, s 48(2) (as amended) has effect subject to any enactment relating to any such appeal which expressly limits or restricts the powers of the court on the appeal: s 48(3). Subject to the Criminal Appeal Act 1995 s 11(6) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1982), if the appeal is against a conviction or sentence, the Supreme Court Act 1981 s 48 (as amended) is construed as including power to award any punishment, whether more or less severe than that awarded by the magistrates' court whose decision is appealed against, if that is a punishment which that court might have awarded: s 48(4) (amended by the Criminal Appeal Act 1995 s 29, Sch 2 para 14). See *R v Birmingham Justices, ex p Wyatt* [1975] 3 All ER 897, [1976] 1 WLR 260, DC. See also COURTS.

Where an appeal against conviction has been abandoned before the commencement of the hearing of the appeal, the Crown Court has no jurisdiction to increase the sentence: *R v Gloucester Crown Court, ex p Betteridge* [1998] Crim LR 218.

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 883 When the right of appeal lies; powers of Crown Court

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 3--Head (2) now refers to an order under the Animal Welfare Act 2006 s 37(1): Magistrates' Courts Act 1980 s 108(3)(c) (amended by the 2006 Act Sch 3 para 10). Head (3) does not prevent an appeal against a surcharge imposed under the Criminal Justice Act 2003 s 161A (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 158): 1980 Act s 108(4) (added by the Domestic Violence, Crime and Victims Act 2004 Sch 10 para 10).

In the 1989 Act s 23 'declaration of relevance' means a declaration by a court for the purposes of Sch 1 that an offence related to football matches, or that it related to one or more particular football matches: s 23(5) (added by the Violent Crime Reduction Act 2006 Sch 3 para 12).

NOTES 13-16--Supreme Court Act 1981 now cited as Senior Courts Act 1981:  
Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(5) APPEALS FROM MAGISTRATES' COURTS/(iii) Appeal to the High Court/A. JUDICIAL REVIEW/884. Control by judicial review.

### **(iii) Appeal to the High Court**

#### **A. JUDICIAL REVIEW**

##### **884. Control by judicial review.**

The proceedings of justices when sitting as a magistrates' court<sup>1</sup> or when otherwise acting judicially<sup>2</sup> are subject to scrutiny by the High Court<sup>3</sup> by means of judicial review<sup>4</sup>. Judicial review is concerned with the process by which the magistrates reached their decision, and it is limited to considering whether the magistrates have failed to exercise their jurisdiction properly or have come to some error of law which appears on the face of the record<sup>5</sup>. It is the legality of the process which is under review, not whether the decision was right or wrong<sup>6</sup>. Remedies for judicial review are by quashing<sup>7</sup>, mandatory and prohibiting orders<sup>8</sup>.

Wherever a justice's decision gives rise to an application for a judicial review, he may file an affidavit setting forth the grounds of the decision and the facts which he considers to have a material bearing upon the question at issue<sup>9</sup>. Affidavits so filed are considered by the High Court although no counsel<sup>10</sup> appears on the justices' behalf<sup>11</sup>.

Where a person who has been sentenced for an offence by a magistrates' court<sup>12</sup>, or by the Crown Court<sup>13</sup> after being convicted of the offence by a magistrates' court and committed to the Crown Court for sentence<sup>14</sup> or who have been sentenced by the Crown Court on appeal against conviction or sentence<sup>15</sup> applies to the High Court for a quashing order<sup>16</sup> to remove the proceedings of the magistrates' court or the Crown Court into the High Court, then, if the High Court determines that the magistrates' court or the Crown Court had no power to pass the sentence, the High Court may, instead of quashing the conviction, amend it by substituting for the sentence passed any sentence which the magistrates' court or the Crown Court had power to impose<sup>17</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 See *R v Crown Court at Reading, ex p Hutchinson* [1988] QB 384, [1988] 1 All ER 333, DC (order of mandamus granted to compel justices to determine validity of byelaws); *R v Chester Justices, ex p Holland* [1984] FLR 725 (mandamus lay in case where a consent order was drawn up in terms which did not reflect the agreement between the parties). Orders of mandamus are now termed 'mandatory orders': see JUDICIAL REVIEW vol 61 (2010) PARA 703 et seq.

3 For the meaning of 'High Court' see PARA 513 note 8 ante.

4 As to judicial review generally see further CIVIL PROCEDURE vol 12 (2009) PARA 1530; JUDICIAL REVIEW. As to the procedure for judicial review see CPR Pt 54; and JUDICIAL REVIEW vol 61 (2010) PARA 659 et seq.

5 *R v Inner London Justices, ex p Wandsworth London Borough Council* [1983] RTR 425, sub nom *R v South Western Justices and Hallcrest Garages Ltd, ex p Wandsworth London Borough Council* 147 JP 212, DC.

6 *Chief Constable of the North Wales Police v Evans* [1982] 3 All ER 141, [1982] 1 WLR 1155, HL.

7 Quashing orders were formerly termed 'orders of certiorari': see JUDICIAL REVIEW vol 61 (2010) PARA 693 et seq. As to the power to quash a summons see *R v Bury Magistrates, ex p Anderton* [1987] NLJ Rep 410, DC.

8 See CPR 54.2; and JUDICIAL REVIEW vol 61 (2010) PARA 661. Prohibiting orders were formerly termed 'orders of prohibition': see JUDICIAL REVIEW vol 61 (2010) PARAS 693 et seq.

9 See the Review of Justices Decisions Act 1872 s 2 (amended by the Statute Law Revision (No 2) Act 1893; and the Finance Act 1949 s 52(10), Sch 11 Pt V). No fee is payable in respect of filing the application: see the Review of Justices Decisions Act 1872 s 2 (as so amended). See also JUDICIAL REVIEW vol 61 (2010) PARA 676.

10 Where there is no allegation of misconduct against the justices, there is no necessity for their being represented by counsel: see *R v Camborne Justices, ex p Pearce* [1954] 2 All ER 850 at 856, DC, per Lord Goddard CJ. See also *R v Newcastle under Lyme Justices, ex p Massey* [1994] 1 WLR 1684, 158 JP 1037.

11 See the Review of Justices Decisions Act 1872 s 3. See also JUDICIAL REVIEW vol 61 (2010) PARA 676.

12 Supreme Court Act 1981 s 43(1)(a).

13 For the meaning of 'Crown Court' see PARA 508 note 9 ante.

14 Supreme Court Act 1981 s 43(1)(b).

15 Ibid s 43(1)(c).

16 Ie in accordance with ibid s 31: see JUDICIAL REVIEW.

17 Ibid s 43(1). See *R v Uxbridge Justices, ex p Clark* [1968] 2 All ER 992n, DC. Any sentence passed by the High Court by virtue of the Supreme Court Act 1981 s 43 in substitution for the sentence passed in the proceedings of the magistrates' court or the Crown Court begins to run, unless the High Court otherwise directs, from the time when it would have begun to run if passed in those proceedings: s 43(2). However, in computing the term of the sentence, any time during which the offender was released on bail in pursuance of the Criminal Justice Act 1948 s 37(1)(d) (as substituted) (see *infra*) is disregarded: Supreme Court Act 1981 s 43(2). Section 43(1), (2) applies, with the necessary modifications, in relation to any order of a magistrates' court or the Crown Court which is made on, but does not form part of, the conviction of an offender as it applies in relation to a conviction and sentence: s 43(3). An order which would not have been made but for a conviction, but which was made after and for a different reason than that for which the original sentence was made, is not an order made on conviction: *R v St Helen's Justices, ex p Jones* [1999] 2 All ER 73, 163 JP 369, DC.

As to the power of the High Court to vary a committal in default see the Supreme Court Act 1981 s 43ZA (as added).

The High Court may, subject to the provisions of the Criminal Justice and Public Order Act 1994 s 25 (as amended) (no bail for defendants charged with or convicted of homicide or rape after previous conviction of such offences) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1170), grant bail to a person who has been convicted or sentenced by a magistrates' court and who has applied to the High Court for a quashing order to remove the proceedings into the High Court or for leave to make such an application: see the Criminal Justice Act 1948 s 37(1)(d) (substituted by the Bail Act 1976 s 12, Sch 2 para 11; and amended by the Criminal Justice and Public Order Act 1994 s 168(2), Sch 10 para 6(b)).

As to bail see also CPR Sch 1 RSC Ord 79 r 9. A magistrates' court has no original power to grant bail to such a person: *Ex p Blyth* [1944] KB 532, [1944] 1 All ER 587; *Practice Note* [1946] WN 103.

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 884 Control by judicial review



NOTES 12-17--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

NOTE 17--1981 Act s 43(1) amended: Civil Procedure (Modification of Supreme Court Act 1981) Order 2004, SI 2004/1033. The prosecution may seek judicial review to increase a sentence imposed by a magistrates' court: see *Re Belfast City Council's Application for Judicial Review* [2008] NIQB 13.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(5) APPEALS FROM MAGISTRATES' COURTS/(iii) Appeal to the High Court/B. APPEALS BY WAY OF CASE STATED/(A) Right of Appeal/885. When the right of appeal exists.

## **B. APPEALS BY WAY OF CASE STATED**

### **(A) RIGHT OF APPEAL**

#### **885. When the right of appeal exists.**

Any person who was a party to any proceedings before a magistrates' court<sup>1</sup>, or is aggrieved by a conviction, order, determination or other proceeding of the court<sup>2</sup>, may question the proceeding on the ground that it is wrong in law or is in excess of jurisdiction by applying to the justices composing the court to state a case for the opinion of the High Court<sup>3</sup> on the question of law or jurisdiction involved<sup>4</sup>.

No application may be made for a case to be stated in respect of a decision against which there is a right of appeal to the High Court or which by virtue of any enactment passed after 31 December 1879 is final<sup>5</sup>.

An appeal lies to the High Court<sup>6</sup> against the making by a magistrates' court of, or its refusal to make, any order under the Children Act 1989<sup>7</sup>, except an order for periodical payments<sup>8</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 A case may be stated only by a magistrates' court empowered to try a cause; therefore examining justices may not state a case: *Card v Salmon* [1953] 1 QB 392, [1953] 1 All ER 324, DC; *Atkinson v United States Government* [1971] AC 197, [1969] 3 All ER 1317, HL; *Dewing v Cummings* [1971] RTR 295, DC. See, however, *R v Allen* [1912] 1 KB 365, DC, where it was held that where examining justices determine not to commit for trial and are of opinion that the charge was not made in good faith and order payment of the costs of the defence by the prosecutor under the Costs in Criminal Cases Act 1908 s 6(3) (now repealed), they may be ordered to state a case. As to costs order in respect of costs incurred in respect of unnecessary or improper acts or omissions see now the Costs in Criminal Cases (General) Regulations 1986, SI 1986/1335, reg 3(1); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2064.

Licensing justices are a magistrates' court within the meaning of the Magistrates' Courts Act 1980 s 148 (see PARA 583 ante), and as such have power to state a case (*Jeffrey v Evans* [1964] 1 All ER 536, [1964] 1 WLR 505, DC; *R v East Riding of Yorkshire Quarter Sessions, ex p Newton* [1968] 1 QB 32, [1967] 3 All ER 118, CA), but examining justices have no power to state a case because their proceedings do not lead to a final decision (*Atkinson v United States Government* supra). The same principle has been applied to a magistrates' refusal to commit under the Extradition Act 1870 (repealed), and was followed in *Ex p Singapore Republic Government* (1977) Times, 27 April, DC. If the decision of the magistrates' court is one to which no reasonable bench of justices could come, a case may be stated because the position is the same as if there had been a decision of fact without evidence to support it: *Bracegirdle v Oxley* [1947] KB 349, [1947] 1 All ER 126, DC; *Afford v Pettit* (1949) 113 JP 433, DC; *Baker v Williams* (1956) 54 LGR 197. A magistrates' court which, under the Maintenance Orders (Facilities for Enforcement) Act 1920 s 4 (as amended) (power of court of summary jurisdiction to confirm maintenance order made in the United Kingdom) (see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 305), confirms a provisional order of maintenance is empowered to state a case: *Peagram v Peagram* [1926] 2 KB 165, DC; *Hague v Hague* [1937] 2 All ER 539, DC. A provision in a statute passed before 31 December 1879

declaring the decision of justices to be final was held not to be a bar to the stating of a case (*R v Bridge* (1890) 24 QBD 609, DC); but a similar provision in a statute passed since that date precludes the stating of a case (*Westminster Corpn v Gordon Hotels Ltd* [1907] 1 KB 910, CA; affd on appeal [1908] AC 142, HL; *Wills & Sons v McSherry* [1914] 1 KB 616, DC), unless, perhaps, in the event of the justices giving their decision subject to a case for the opinion of the High Court (*Westminster Corpn v Gordon Hotels Ltd* supra at 915 per Buckley LJ).

3 For the meaning of 'High Court' see PARA 513 note 8 ante.

4 Magistrates' Courts Act 1980 s 111(1). Points of law, including the submission that the finding in fact has no evidence to support it, alone are open: *Cababé v Walton-on-Thames Urban Council* [1914] AC 102 at 114, HL, per Lord Dunedin. Where justices have declined to hear a matter for want of jurisdiction they may not state a case upon it (*R v Rawson, West Riding of Yorkshire Justices* (1866) 6 B & S 802; followed in *Pratt v AA Sites Ltd* [1938] 2 KB 459, [1938] 2 All ER 371, DC), but it is otherwise if, having heard the matter, they then determine that they have no jurisdiction (*Muir v Hore* (1877) 47 LJMC 17, DC). In criminal proceedings, justices have no jurisdiction to state a case unless and until they have reached a final determination on the matter before them: *Streames v Copping* [1985] QB 920, [1985] 2 All ER 122; *R v Greater Manchester Justices, ex p Aldi GmbH & Co KG* (1994) 159 JP 717, DC. The existence of a statutory review procedure does not preclude an application for a case to be stated: *R v Horseferry Road Magistrates' Court, ex p Bernstein* [1987] 1 FLR 504.

As to appeals by way of case stated see also CIVIL PROCEDURE vol 12 (2009) PARA 1688 et seq.

5 Magistrates' Courts Act 1980 s 111(1).

6 le subject to any express provisions to the contrary: see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 304.

7 See the Children Act 1989 s 94(1) (as amended); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 304. Such appeals are to be made in accordance with the provisions of the Family Proceedings Rules 1991, SI 1991/1247, r 4.22 (amended by SI 1992/2067; SI 2001/821): Family Proceedings Rules 1991, SI 1991/1247, r 4.22(1). As to the procedure to be followed see *Practice Direction* [1992] 1 All ER 864, sub nom *Practice Direction (Family Division: Appeals from Justices)* [1992] 1 WLR 261. As to the powers of the High Court see the Children Act 1989 s 94(4)-(9); para 894 post; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 304.

Where a magistrates' court has power, in relation to any proceedings under the Children Act 1989, to decline jurisdiction because it considers that the case can more conveniently be dealt with by another court, no appeal lies against any exercise by that magistrates' court of that power: s 94(2).

8 Ibid s 94(3). As to periodical payments under the Children Act 1989 s 15(1), Sch 1 (as amended) see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 539 et seq.

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 885-888 When the right of appeal exists ... Applications to justices for statement of case

The Magistrates' Courts Act 1980 s 111 does not apply in relation to family proceedings within the meaning of s 111A: s 111(7) (added by SI 2009/871). As to appeals on ground of error of law or excess of jurisdiction in family proceedings see the 1980 Act s 111A (added by SI 2009/871).

### 885 When the right of appeal exists

NOTE 4--On an appeal against an order for costs, the court has jurisdiction only to determine if the order was wrong in law or in excess of jurisdiction and not if it was wrong in any other respect: *Blows v Herefordshire DC* [2009] EWHC 666 (Admin), [2009] LLR 269, [2009] All ER (D) 163 (Mar), DC.

NOTE 7--SI 1991/1247 r 4.22 revoked: SI 2009/636. See now SI 1991/1247 rr 8.A1, 8.2, 8.2A-8.2H; and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 900.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(5) APPEALS FROM MAGISTRATES' COURTS/(iii) Appeal to the High Court/B. APPEALS BY WAY OF CASE STATED/(A) Right of Appeal/886. Effect of appealing by way of case stated.

### **886. Effect of appealing by way of case stated.**

If a person entitled by law to appeal to the Crown Court<sup>1</sup> against the decision of a magistrates' court<sup>2</sup> chooses to appeal by way of case stated to the High Court<sup>3</sup> his right of appeal to the Crown Court ceases<sup>4</sup> even where the appeal by way of case stated is subsequently abandoned<sup>5</sup>.

1 For the meaning of 'Crown Court' see PARA 508 note 9 ante. As to appeals to the Crown Court see PARA 883 ante.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 See under the Magistrates' Courts Act 1980 s 111(1): see PARA 885 ante. For the meaning of 'High Court' see PARA 513 note 8 ante.

4 See the Magistrates' Courts Act 1980 s 111(4). See also *R v Crown Court at Winchester, ex p Lewington* [1982] 1 WLR 1277, DC (appeal by way of case stated in respect of conviction would not bar appeal to Crown Court against sentence).

5 *R v Crown Court at Winchester, ex p Lewington* [1982] 1 WLR 1277, DC. The right to appeal to the Crown Court would seem not to be excluded where the application to state a case was made out of time: see *P & M Supplies (Essex) Ltd v Hackney London Borough Council* (1990) 154 JP 814, DC.

## **UPDATE**

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### **885-888 When the right of appeal exists ... Applications to justices for statement of case**

The Magistrates' Courts Act 1980 s 111 does not apply in relation to family proceedings within the meaning of s 111A: s 111(7) (added by SI 2009/871). As to appeals on ground of error of law or excess of jurisdiction in family proceedings see the 1980 Act s 111A (added by SI 2009/871).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(5) APPEALS FROM MAGISTRATES' COURTS/(iii) Appeal to the High Court/B. APPEALS BY WAY OF CASE STATED/(A) Right of Appeal/887. Duty of justices to state a case.

### **887. Duty of justices to state a case.**

If the justices consider that the application for a case to be stated<sup>1</sup> is frivolous<sup>2</sup>, they may refuse it, and, if the applicant so requires, they must give him a certificate stating that the application has been refused<sup>3</sup>. The justices should give an indication why they have formed the opinion that the application is frivolous<sup>4</sup>.

Where the justices refuse to state a case, the High Court<sup>5</sup> may, on the application of the person who applied for the case to be stated, make a mandatory order<sup>6</sup> requiring the justices to state a case<sup>7</sup>, but the High Court will not entertain a case where the only issue is one of fact<sup>8</sup>. Within 21 days after the receipt of the date on which a mandatory order is so made<sup>9</sup>, the justices' chief executive<sup>10</sup> must send a draft case<sup>11</sup> within 21 days after receipt of the application to the applicant or his solicitor and a copy to the respondent or his solicitor<sup>12</sup>. Within 21 days after receipt of the draft, each party may make written representations on it signed by or on behalf of the party making them and sent to the justices' chief executive<sup>13</sup>.

Magistrates' discretion to state a case at an interlocutory stage of civil proceedings must be exercised sparingly and only in exceptional circumstances<sup>14</sup>. Magistrates should not continue to refuse to state a case when leave to apply for a mandatory order against that refusal has been granted<sup>15</sup>.

1    le under the Magistrates' Courts Act 1980 s 111 (as amended): see PARAS 885-886 ante.

2    le futile, misconceived, hopeless or academic: *R v Mildenhall Magistrates' Court, ex p Forest Heath District Council* (1997) 161 JP 401, CA.

3    Magistrates' Courts Act 1980 s 111(5). However, the justices must not refuse to state a case if the application is made by or under the direction of the Attorney-General: s 111(5). See *R v Sharpe* (1902) 67 JP 181, DC. It is proper to refuse to state a case if the magistrates are bound by a decision of the High Court from which there is no extended right of appeal: *R v Shiel* (1900) 16 TLR 349, CA. It is otherwise if the previous decision is not that of a final court of appeal: *R v Watson, ex p Bretherton* [1945] KB 96, [1944] 2 All ER 562, DC. A case may not be refused on the ground that an objection was not formally brought to the magistrates' notice, where such objection goes to the root of the matter: *Ex p Markham* (1869) 21 LT 748.

4    *R v Mildenhall Magistrates' Court, ex p Forest Heath District Council* (1997) 161 JP 401, CA.

5    For the meaning of 'High Court' see PARA 513 note 8 ante.

6    Mandatory orders were formerly termed 'orders of mandamus': see JUDICIAL REVIEW vol 61 (2010) PARA 703 et seq.

7    Magistrates' Courts Act 1980 s 111(6).

8    *R v Yeomans* (1860) 24 JP 149; *Dyer v Park* (1874) 38 JP 294; *Re Basingstoke School* (1877) 41 JP Jo 118, DC.

9    le under the Magistrates' Courts Act 1980 s 111(6): see the text and notes 4-7 supra.

10   As to the justices' chief executive see PARA 624 et seq ante.

11   le a draft case in which are stated the matters required under Magistrates' Courts Rules 1981, SI 1981/552, r 81: see PARA 892 post.

12   Ibid r 77(1), (3) (r 77(1) amended by SI 2001/610). Any document required to be sent out under the Magistrates' Courts Rules 1981, SI 1981/552, r 77 (as amended) must either be delivered to him or sent by post in a registered letter or by recorded delivery service and, if sent to an applicant or respondent, must be addressed to him at his last known or usual place of abode: r 80. Where the sending of the draft case is delayed by the applicant the High Court may exercise its discretion not to hear the case: *Parsons v FW Woolworth & Co Ltd* [1980] 3 All ER 456, [1980] 1 WLR 1472, DC.

13   Magistrates' Courts Rules 1981, SI 1981/552, r 77(2) (amended by SI 2001/610).

14   *R v Chesterfield Justices, ex p Kovacs* [1992] 2 All ER 325.

15 *R v Herefordshire Magistrates', ex p Hereford and Worcestershire Council* (1995) 72 P & CR 226.

## UPDATE

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### **885-888 When the right of appeal exists ... Applications to justices for statement of case**

The Magistrates' Courts Act 1980 s 111 does not apply in relation to family proceedings within the meaning of s 111A: s 111(7) (added by SI 2009/871). As to appeals on ground of error of law or excess of jurisdiction in family proceedings see the 1980 Act s 111A (added by SI 2009/871).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(5) APPEALS FROM MAGISTRATES' COURTS/(iii) Appeal to the High Court/B. APPEALS BY WAY OF CASE STATED/(B) Stating and Entering the Case/888. Application to justices for statement of case.

## (B) STATING AND ENTERING THE CASE

### **888. Application to justices for statement of case.**

An application for the statement of a case by a magistrates' court<sup>1</sup> must be made to the justices<sup>2</sup> comprising the court whose decision is questioned within 21 days after the day on which the court's decision was given<sup>3</sup>. Such an application must be made in writing and signed by or on behalf of the applicant and must identify the question or questions of law or jurisdiction on which the opinion of the High Court<sup>4</sup> is sought<sup>5</sup>. The application must be sent to the justices' chief executive<sup>6</sup> for the magistrates' court whose decision is questioned<sup>7</sup>.

Within 21 days after receipt of the application the justices' chief executive must, unless the justices refuse to state a case<sup>8</sup>, send a draft case<sup>9</sup> to the applicant or his solicitor and a copy to the respondent or his solicitor<sup>10</sup>. Within 21 days after receipt of the draft, each party may make written representations on it signed by or on behalf of the party making them and sent to the justices' chief executive<sup>11</sup>. Within 21 days after the latest day on which representations may be made, the justices whose decision is questioned must make such adjustments, if any, to the draft case prepared as they think fit, after considering any such representations, and must state and sign the case<sup>12</sup>. There is provision for the extension of these time limits, but in that event the justices' chief executive must attach to the final case a statement of the delay and the reasons for it<sup>13</sup>. Forthwith after the case has been stated and signed the justices' chief executive for the court must send it to the applicant or his solicitor, together with any statement of delay<sup>14</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 The application is good notwithstanding that an error occurs in stating the names of the justices to whom it is addressed: *R v Oxford (Bullingdon) Justices, ex p Bird* [1948] 1 KB 100, DC.

3 Magistrates' Courts Act 1980 s 111(2). The High Court has no power to extend this period: *Michael v Gowland* [1977] 2 All ER 328, [1977] 1 WLR 296, DC.

For the purpose of the Magistrates' Courts Act 1980 s 111(2), the day on which the decision of the magistrates' court is given is, where the court has adjourned the trial of an information after conviction, the day on which the court sentences or otherwise deals with the offender: s 111(3). This includes the day on which a decision on costs is made if that is the final determination of the proceedings: *Liverpool City Council v Worthington* [1998] EHLR 225, DC. Where the applicant has not complied with the requirements as to time, the High Court in its discretion ought not to order justices to state a case: *R v Stoke-on-Trent Justices* [1926] 2 KB 461, DC. A Sunday, even if the last of the prescribed days, must be reckoned as one of them: *Peacock v R* (1858) 4 CBNS 264; *Wynne v Ronaldson* (1865) 12 LT 711.

An application within 21 days which fails to identify the question of law may subsequently be amended within such time as the magistrates allow: *R v Bromley Magistrates' Court, ex p Waitrose Ltd* [1980] 3 All ER 464, DC. An application is made when it is sent, provided this is in such circumstances that in the normal course of events it would arrive within the prescribed time limit: *P & M Supplies (Essex) Ltd v Hackney London Borough Council* [1990] Crim LR 569.

Although the requirement to make the application within 21 days is mandatory, the requirement to identify the question or questions of law or jurisdiction is discretionary.

As to the reckoning of time generally see TIME.

4 For the meaning of 'High Court' see PARA 513 note 8 ante.

5 Magistrates' Courts Rules 1981, SI 1981/552, r 76(1). Where one of the questions is whether there was evidence on which the magistrates' court could come to its decision, the particular finding of fact made by the magistrates' court which it is claimed cannot be supported by the evidence before the court must be specified: r 76(2). In simple cases where the appellant has been professionally represented at the hearing it should be unnecessary for him to obtain a copy of the clerk's notes of evidence before drafting the case: see *Practice Note* [1972] 1 All ER 286, [1972] 1 WLR 3, DC. A single application may be sufficient if it purports to deal with all the offences in respect of which decisions are questioned and is headed with the names of the various persons charged: *DPP v Lamb* [1941] 2 KB 89, [1941] 2 All ER 499, DC. Failure to identify the question of law or jurisdiction does not go to the jurisdiction of the High Court to adjudicate: *Robinson v Whittle* [1980] 3 All ER 459, DC. The question raised in the case should be as simple as possible and directed to the crucial question on which the case turns: *Nottingham City Council v Amin* [2000] 2 All ER 946, [2000] 1 WLR 1071.

6 As to the justices' chief executive see PARA 624 et seq ante.

7 Magistrates' Courts Rules 1981, SI 1981/552, r 76(3) (amended by SI 2001/610). The application must either be delivered to the justices' chief executive or sent by post in a registered letter or by recorded delivery: see the Magistrates' Courts Rules 1981, SI 1981/552, r 80.

8 le under the Magistrates' Courts Act 1980 s 111(5): see PARA 887 ante.

9 le a draft case in which are stated the matters required under Magistrates' Courts Rules 1981, SI 1981/552, r 81: see PARA 892 post.

10 Ibid r 77(1) (amended by SI 2001/610). Any document required to be sent out under the Magistrates' Courts Rules 1981, SI 1981/552, r 77 (as amended) must either be delivered to him or sent by post in a registered letter or by recorded delivery service and, if sent to an applicant or respondent, must be addressed to him at his last known or usual place of abode: r 80. Where the sending of the draft case is delayed by the applicant the High Court may exercise its discretion not to hear the case: *Parsons v FW Woolworth & Co Ltd* [1980] 3 All ER 456, [1980] 1 WLR 1472, DC.

11 Magistrates' Courts Rules 1981, SI 1981/552, r 77(2) (amended by SI 2001/610).

12 Magistrates' Courts Rules 1981, SI 1981/552, r 78(1).

13 Ibid r 79(1), (2), (3) (amended by SI 2001/610).

14 Magistrates' Courts Rules 1981, SI 1981/552, r 78(3) (amended by SI 2001/610).

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### **885-888 When the right of appeal exists ... Applications to justices for statement of case**

The Magistrates' Courts Act 1980 s 111 does not apply in relation to family proceedings within the meaning of s 111A: s 111(7) (added by SI 2009/871). As to appeals on ground of error of law or excess of jurisdiction in family proceedings see the 1980 Act s 111A (added by SI 2009/871).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(5) APPEALS FROM MAGISTRATES' COURTS/(iii) Appeal to the High Court/B. APPEALS BY WAY OF CASE STATED/(B) Stating and Entering the Case/889. Recognisances.

### **889. Recognisances.**

Justices to whom application has been made to state a case for the opinion of the High Court<sup>1</sup> on any proceeding of a magistrates' court<sup>2</sup> are not required to state the case until the applicant has entered into a recognisance, with or without sureties, before the magistrates' court, conditioned to prosecute the appeal without delay and to submit to the judgment of the High Court and pay such costs as that court may award<sup>3</sup>. The clerk of the magistrates' court is not required to deliver the case to the applicant, except in any criminal matter, until the applicant has paid the fees payable for the case and for the recognisances to the justices' chief executive<sup>4</sup> for the court<sup>5</sup>.

1 For the meaning of 'High Court' see PARA 513 note 8 ante.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 Magistrates' Courts Act 1980 s 114. The recognisance may be entered into at any time before the case is stated and delivered (*Stanhope v Thorsby* (1866) LR 1 CP 423), but not afterwards (*Walker v Delacombe* (1894) 63 LJMC 77). Where a magistrate took the recognisance of the applicant and his surety, afterwards stating a case by order, it was held that he had no authority to require a fresh recognisance notwithstanding the bankruptcy of the applicant and the death of his surety in the meanwhile: *R v Kettle, ex p Ellis* [1905] 1 KB 212, DC. Where appellants are a corporation, a recognisance entered into by their clerk which does not show that it was entered into on their behalf and that it is their property which is made liable is insufficient: *Leyton UDC v Wilkinson* [1927] 1 KB 853, CA. The justices must first have regard to the applicant's means: *R v Newcastle upon Tyne Justices, ex p Skinner* [1987] 1 All ER 349, [1987] 1 WLR 312, DC. The fact that the applicant is legally aided with a nil contribution and has no disposable assets does not, of itself, mean that the justices cannot impose a requirement, as a condition of stating the case, that he enter into a recognisance with a surety to prosecute the appeal: see *R v Croydon Magistrates' Court, ex p Morgan* (1996) 161 JP 169. As to forms of recognisance see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2, Form 121. See PARA 505 note 12 ante.

4 As to the justices' chief executive see PARA 624 et seq ante.

5 Magistrates' Courts Act 1980 s 114 (amended by the Access to Justice Act 1999 s 90(1), Sch 13 paras 95, 113). As to fees see PARA 771 ante.

## **UPDATE**

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

## 889 Recognisances

TEXT AND NOTE 4--For 'The clerk of the magistrates' court' read 'The justices' clerk' and for 'justices' chief executive' read 'designated officer': Magistrates' Courts Act 1980 s 114 (amended by the Courts Act 2003 Sch 8 para 235).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(5) APPEALS FROM MAGISTRATES' COURTS/(iii) Appeal to the High Court/B. APPEALS BY WAY OF CASE STATED/(B) Stating and Entering the Case/890. Bail on case stated.

### 890. Bail on case stated.

Where a person has given notice of appeal to the Crown Court<sup>1</sup> against the decision of a magistrates' court<sup>2</sup> or has applied to a magistrates' court to state a case for the opinion of the High Court<sup>3</sup>, then, if he is in custody, the magistrates' court may<sup>4</sup> grant him bail<sup>5</sup>. The time and place at which he is to appear, except in the event of the determination in respect of which the case is stated being reversed by the High Court, must be the magistrates' court at such time within ten days after the judgment of the High Court has been given as may be specified by the magistrates' court<sup>6</sup>. Any recognisance<sup>7</sup> that may be taken from him or from any surety for him is conditioned accordingly<sup>8</sup>.

1 For the meaning of 'Crown Court' see PARA 508 note 9 ante.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 For the meaning of 'High Court' see PARA 513 note 8 ante.

4 The subject to the Criminal Justice and Public Order Act 1994 s 25 (as amended) (no bail for defendants charged with or convicted of homicide or rape after previous conviction of such offences): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1170.

5 Magistrates' Courts Act 1980 s 113(1) (amended by the Criminal Justice and Public Order Act 1994 s 168(2), Sch 10 para 44). The Magistrates' Courts Act 1980 s 113(1) (as amended) does not apply where the accused has been committed to the Crown Court for sentence under the Magistrates' Courts Act 1980 s 37 (repealed) or the Powers of Criminal Courts (Sentencing) Act 2000 s 3 (see PARA 777 ante): Magistrates' Courts Act 1980 s 113(3) (amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 72). Time during which a person has been admitted to bail does not run as part of a sentence of imprisonment or detention: Criminal Justice Act 1948 s 37(6) (amended by the Criminal Justice Act 1967 s 103(2), Sch 7 Pt I; and the Bail Act 1976 s 12, Sch 2 para 11(1)). The Criminal Justice Act 1948 s 37(6) (as amended) applies to a person released on bail by a magistrates' court under the Magistrates' Courts Act 1980 s 113 (as amended) pending the hearing of a case stated as it applies to a person released on bail by the High Court under the Criminal Justice Act 1967 s 22 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1190): Magistrates' Courts Act 1980 s 113(4). As to forms of recognisance see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2 Form 121. See PARA 505 note 12 ante.

6 Magistrates' Courts Act 1980 s 113(2)(b). The High Court has power to admit to bail anyone from whom bail has been withheld by the magistrates and has power to vary any conditions on which it was granted: see the Criminal Justice Act 1967 s 22 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1190.

7 As to recognisance see PARA 889 ante.

8 Magistrates' Courts Act 1980 s 113(2).



**UPDATE****772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(5) APPEALS FROM MAGISTRATES' COURTS/(iii) Appeal to the High Court/B. APPEALS BY WAY OF CASE STATED/(B) Stating and Entering the Case/891. Transmission of case to High Court.

**891. Transmission of case to High Court.**

The appellant must file the appellant's notice at the appeal court within ten days after he receives the stated case<sup>1</sup>. The appellant must serve the appellant's notice and accompanying documents<sup>2</sup> on all respondents within four days after they are filed or lodged at the appeal court<sup>3</sup>. Unless the court otherwise directs, a respondent need not take any action when served with the appellant's notice until such time as notification is given to him that permission to appeal has been given<sup>4</sup>. Provision is made for the disposal of uncontested matters<sup>5</sup>.

1 *Practice Direction--Appeals* (2001) PD 52 para 18.4. The performance of this duty is a condition precedent in default of which, without compelling circumstances, the High Court may not hear the case: *Woodhouse v Woods* (1859) 29 LJMC 149; *Morgan v Edwards* (1860) 29 LJMC 108; *Banks v Goodwin* (1863) 3 B & S 548; *Great Northern and London and North Western Joint Committee v Inett* (1877) 2 QBD 284. Sunday is not excluded in calculating the ten days (*Aspinall v Sutton* [1894] 2 QB 349, DC), and delay caused by sending the case back to the clerk to the justices for correction is no excuse (*Gloucester Local Board of Health v Chandler* (1863) 32 LJMC 66). However, where the courts are closed, delay in transmission may be excused. Thus a case received on Good Friday and transmitted on Wednesday, when the courts re-opened, was held to have been duly transmitted within the period allowed: *Mayer v Harding* (1867) LR 2 QB 410. Where the case was deposited in the letter box of the Royal Courts of Justice at so late an hour that it was not received at the Crown Office until the following day, which was not within the time prescribed, this was held to be compliance with the statute: *Holland v Peacock* [1912] 1 KB 154, DC. Unavoidable delay in the course of transmission, eg by the post, might be excused (cf *Banks v Goodwin* supra at 555 per Blackburn J), but not where the delay is caused by the neglect of a London agent of the appellant's solicitor (*Pennell v Churchwardens of Uxbridge* (1862) 31 LJMC 92). Where a case not transmitted in the required time was restated in the same terms with the date altered, and duly transmitted, it was held there was no power to amend the date: *Williams v Watkins* (1933) 49 TLR 315. Where a case which has not been transmitted within the required time has been set down for hearing by the appellant, costs will be given against him: *Great Northern and London and North Western Joint Committee v Inett* supra. Application for extension of time may be made to the Divisional Court, supported by an affidavit explaining the delay: *Whittington v Natrass* [1958] 3 All ER 145, 122 JP 467, DC. In a criminal case a single judge may deal with such an application and leave should be granted where the case stated raises a genuine point of law which needs to be resolved in the interests of the administration of justice: *Devlin v F* [1982] 2 All ER 450, 146 JP 252.

2 The appellant must lodge the following documents with his appellant's notice: (1) the stated case; (2) a copy of the judgment, order or decision in respect of which the case has been stated; and (3) where the judgment, order or decision in respect of which the case has been stated was itself given or made on appeal, a copy of the judgment, order or decision appealed from: *Practice Direction--Appeals* (2001) PD 52 para 18.5.

3 *Practice Direction--Appeals* (2001) PD 52 para 18.6.

4 CPR 52.5(22). As to service of documents see CPR Pt 6; and CIVIL PROCEDURE vol 11 (2009) PARA 138 et seq.

5 See *Practice Direction--Appeals* (2001) PD 52 para 12.

**UPDATE**

## 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 891 Transmission of case to High Court

NOTE 4--CPR Pt 6 substituted: SI 2008/2178.

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(5) APPEALS FROM MAGISTRATES' COURTS/(iii) Appeal to the High Court/B. APPEALS BY WAY OF CASE STATED/(B) Stating and Entering the Case/892. Form of case.

### 892. Form of case.

A case stated by a magistrates' court<sup>1</sup> must state the facts found by the court and the question of law or jurisdiction on which the opinion of the High Court<sup>2</sup> is sought<sup>3</sup>. Unless one of the questions on which that opinion is sought is whether there was evidence on which the magistrates' court could come to its decision, the case must not contain a statement of the evidence<sup>4</sup>. Where one of the questions on which that opinion is sought is whether there was evidence on which the magistrates' court could come to its decision, the particular finding of fact which it is claimed cannot be supported by the evidence before the magistrates' court must be specified in the case<sup>5</sup>. The High Court will not hear argument on any point not raised before the magistrates' court and set out in the case<sup>6</sup>, unless it arises upon the face of the facts as stated<sup>7</sup> or on a question of law which no evidence could alter<sup>8</sup>. The case should furnish the High Court with the justices' reasons<sup>9</sup>. A case may be stated on behalf of the justices whose decision is questioned by any two or more of them and, if the justices so direct, may be signed on their behalf by their clerk<sup>10</sup>. The High Court has power to send a case back to the justices to be amended<sup>11</sup>. Where a party is of the opinion that the facts are improperly stated, he can apply to the court asking that the case be sent back to the justices for amendment<sup>12</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 For the meaning of 'High Court' see PARA 513 note 8 ante.

3 Magistrates' Courts Rules 1981, SI 1981/552, r 81(1). For the form in which a case is to be stated see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2 (as amended), Sch 2, Form 155. See PARA 505 note 12 ante. The terms of this form should not be disregarded: *Practice Note* [1972] 1 All ER 286, [1972] 1 WLR 3, DC. See also *RAH (Transporters) Ltd v Edgar* [1953] 2 All ER 999n, [1953] 1 WLR 1309; *Downsborough v Huddersfield Industrial Society Ltd* [1942] 1 KB 306, [1941] 3 All ER 434, DC; and *Mills v Boddy* (1950) 94 Sol Jo 371, DC. Where a properly formed question is submitted to justices for them to state a case, it must not be fundamentally altered without the party which framed the question having an opportunity to comment on the change: *Waldie v DPP* (1995) 159 JP 514, DC.

4 Magistrates' Courts Rules 1981, SI 1981/552, r 81(3). Except where the condition in r 81(3) is satisfied, a statement of the evidence should not be included and the High Court is not competent to receive notes of evidence with the case stated: *Cotgreave and Cotgreave v Cheshire County Council* (1992) 156 JP Jo 780, DC. However, the original statement, or a photocopy of the whole document, which forms a material part of the case stated should be appended to the case: *Gaimster v Marlow* [1984] QB 218, [1985] 1 All ER 82, DC. See also: *Kent County Council v Multi Media Marketing (Canterbury) Ltd* (1994) Times, 7 December, DC (computer disk). As to the marking and use of affidavits, exhibits and bundles of documents generally in the High Court see Practice Direction--Written Evidence (2001) PD 32; CIVIL PROCEDURE vol 11 (2009) PARA 989 et seq.

5 Magistrates' Courts Rules 1981, SI 1981/552, r 81(2).

6 *Purkis v Huxtable* (1859) 1 E & E 780; *Motteram v Eastern Counties Rly Co* (1859) 7 CBNS 58; *Marshall v Smith* (1873) LR 8 CP 416. A question of jurisdiction which was not raised before the magistrates' court and which has not been left to the High Court may be raised, however, but the party must pay costs thrown away by failure to take the point at the proper time: *London, Edinburgh and Glasgow Assurance Co Ltd v Partington* (1903) 67 JP 255. The facts which justices consider have been proved must be stated, not evidence from which the facts may be inferred: *Star Tea Co Ltd v Neale* (1909) 8 LGR 5, DC. See also *Needham & Co Ltd v Worcestershire County Council* (1909) 7 LGR 595.

7 *Ex p Markham* (1869) 21 LT 748; *Knight v Halliwell* (1874) LR 9 QB 412.

8 *Kates v Jeffery* [1914] 3 KB 160, DC; *Whitehead v Haines* [1965] 1 QB 200, [1964] 2 All ER 530, DC; *Burke v Jobson* [1972] RTR 59, DC.

9 *Squires v Squires* (1946) 110 JP 305; *Practice Direction* (1949) 93 Sol Jo 390.

10 Magistrates' Courts Rules 1981, SI 1981/552, r 78(2). That the decision of the magistrates' court was arrived at by a majority of the justices present is irrelevant and should not be mentioned in the case: *More O'Ferrall Ltd v Harrow UDC* [1947] KB 66, [1946] 2 All ER 489, DC. The case may be signed by a magistrate notwithstanding that he has ceased to hold office since his decision: *Grocock v Grocock* [1920] 1 KB 1. The case may, apparently, be heard where the decision questioned is that of a magistrates' court composed of two justices one of whom has died before the case was stated: *Marsland v Taggart* [1928] 2 KB 447, DC. See also *Kean v Robinson* [1910] 2 IR 306. Cf *Peradeniya Service Bus Co Ltd v Sri Lanka Omnibus Co Ltd* [1952] WN 373.

11 See the Supreme Court Act 1981 s 28A(1), (2) (s 28A added by the Statute Law (Repeals) Act 1993 s 1(2), Sch 2 para 9; and substituted by the Access to Justice Act 1999 s 61); *Spicer v Warbey* [1953] 1 All ER 284, [1953] 1 WLR 334, DC; *Cowlshaw v Chalkley* [1955] 1 All ER 367n, [1955] 1 WLR 101, DC. This power may be exercised before the case is argued: *Yorkshire Tire and Axle Co v Rotherham Local Board of Health* (1858) 4 CBNS 362.

Where a case is sent back for amendment, judgment will be delivered on the case after it is amended: see the Supreme Court Act 1981 s 28A(3) (as so added and substituted). Where, after being sent back for amendment, the case is abandoned by the appellant, the court may order him to pay the respondent's costs: *Crowther v Boulton* (1884) 13 QBD 680.

12 *Spicer v Warbey* [1953] 1 All ER 284, [1953] 1 WLR 334, DC. A dissatisfied party should make application to the Divisional Court, supported by affidavit, without delay, for the case to be sent back to the justices for amendment: *Spicer v Warbey* supra; *Cowlshaw v Chalkley* [1955] 1 All ER 367n, [1955] 1 WLR 101, DC.

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 892 Form of case

NOTE 3--SI 1981/553 Sch 2 Form 155 amended: SI 2005/617.

NOTE 11--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(5) APPEALS FROM MAGISTRATES' COURTS/(iii) Appeal to the High Court/B. APPEALS BY WAY OF CASE STATED/(C) The Hearing/893. Appearance of justices.

## (C) THE HEARING

### 893. Appearance of justices.

On the hearing of an appeal by way of case stated, where justices are not made parties to the case, they have no right to appear<sup>1</sup>, and are not liable to costs in respect of or by reason of any appeal against their decision<sup>2</sup>. They enjoy general immunity from an order to pay costs in any proceedings in respect of any act or omission of theirs in the execution, or purported execution, of their duty<sup>3</sup>.

1 *Smith v Butler* (1885) 16 QBD 349. As to the appearance of justices where application is made for judicial review see JUDICIAL REVIEW vol 61 (2010) PARA 676.

2 Justices may, however, be ordered to pay costs where they deliberately state the facts incorrectly: *Edge v Edwards* (1932) 48 TLR 449, DC.

3 See the Justices of the Peace Act 1997 s 53A(1) (as added); and PARA 568 ante. As to the circumstances where they do not have such immunity see s 53A(2) (as added); and PARA 568 ante. For the circumstances where the court may instead order the costs to be paid by the Lord Chancellor see the Justices and Justices' Clerks (Costs) Regulations 2001, SI 2001/1296; and PARA 568 ante.

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(5) APPEALS FROM MAGISTRATES' COURTS/(iii) Appeal to the High Court/B. APPEALS BY WAY OF CASE STATED/(C) The Hearing/894. Powers of the High Court.

### 894. Powers of the High Court.

The powers of the High Court<sup>1</sup> in respect of the hearing of appeals by way of case stated are exercised by the Administrative Court<sup>2</sup> or the Divisional Court of the Family Division<sup>3</sup>.

The High Court may, if it thinks fit, cause the case to be sent back for amendment and, where it does so, the case must be amended accordingly<sup>4</sup>. The High Court must hear and determine the question arising on the case (or the case as amended) and must reverse, affirm or amend the determination in respect of which the case has been stated<sup>5</sup>, or remit the matter to the magistrates' court<sup>6</sup> with the opinion of the High Court<sup>7</sup> and may make such other order in relation to the matter (including as to costs) as it thinks fit<sup>8</sup>. In general all orders are final and conclusive on all parties, but in a criminal cause or matter appeal lies to the House of Lords<sup>9</sup> on a point of law of general public importance<sup>10</sup>.

On an appeal<sup>11</sup> against the making by a magistrates' court of any order under the Children Act 1989 or any refusal by a magistrates' court to make such an order, the High Court may make such orders as may be necessary to give effect to its determination of the appeal<sup>12</sup>.

1 For the meaning of 'High Court' see PARA 513 note 8 ante.

2 The Administrative Court was formerly known as the Crown Office List: see *Practice Note* [2000] 4 All ER 1071, sub nom *Practice Direction (Administrative Court: Establishment)* [2000] 1 WLR 1654.

3 See PARA 882 ante; and COURTS. See *Finchley UDC v Blyton* (1913) 77 JP Jo 556, where the respondent died before the case came into the list, and the High Court declined to hear the case argued and ordered it to be

struck out. Where the appellant has died, the court has jurisdiction to allow his executors, having an interest in the appeal, to proceed (*Hodgson v Lakeman* [1943] 1 KB 15, CCA), but the interest must be a legal interest, not merely a sentimental desire to clear the name of a deceased person who was sentenced to imprisonment (*R v Rowe* [1955] 1 QB 573, [1955] 2 All ER 234, CCA). Where an appellant has appealed by way of case stated, leave of the High Court is not needed for him to withdraw that application: *Collett v Bromsgrove District Council* (1996) 160 JP 593, [1997] Crim LR 206.

4 Supreme Court Act 1981 s 28A(1), (2) (s 28A added by the Statute Law (Repeals) Act 1993 s 1(2), Sch 2 para 9; and substituted by the Access to Justice Act 1999 s 61).

5 Supreme Court Act 1981 s 28A(3)(a) (as added and substituted: see note 4 supra). Where there is a joint conviction of several persons, the conviction may be affirmed against some and reversed against others: *Brown v Turner* (1863) 13 CBNS 485; *O'Neill v Longman* (1863) 32 LJMC 259. The court cannot, however, reduce the penalty imposed by the magistrates' court: *Evans v Hemingway* (1887) 52 JP 134, DC. However, on reversing the justices' decision to dismiss an information, the court may impose what would seem to be the only proper penalty the justices could impose in the circumstances of the case: *Coote v Winfield* [1980] RTR 42, DC. When there is evidence to show that an offence within the jurisdiction of the magistrates' court was or might have been committed, the court will not in general disturb the magistrates' decision: see *R v Davis* (1795) 6 Term Rep 177; *R v Reason* (1795) 6 Term Rep 375. However, it may quash a conviction where there is no evidence to support it: *Watkin v Fenwick* (1858) 7 WR 16.

6 For the meaning of 'magistrates' court' see PARA 583 ante.

7 Supreme Court Act 1981 s 28A(3)(b) (as added and substituted: see note 4 supra)

8 Ibid s 28A(3) (as added and substituted: see note 4 supra). The Administrative Court will not remit a case to a magistrates' court for the latter court to deal with a point which did not arise before that court: see *LCC v Farren* [1956] 3 All ER 401, [1956] 1 WLR 1297, CA. Where a magistrate had dismissed a summons and the High Court, upon case stated, remitted the matter with an opinion that he should have convicted, and, on an application being made to the magistrate to reinstate the case and convict, the magistrate held that he had no power to do so, the court by mandamus compelled him to comply with its order: *R v Corser* (1892) 8 TLR 563, DC. Where a conviction has been arrived at on a wrong ruling of law, the High Court will not, it seems, remit the case for a new trial unless the magistrates' court has adjourned the hearing and asked in the case itself for directions or has asked for the case to be remitted to it if its decision is held to be wrong: *Taylor v Wilson* (1911) 76 JP 69, DC. The court has the power to order a rehearing by a different bench whenever that appears to be an appropriate course: *Griffith v Jenkins* [1992] 2 AC 76, [1992] 1 All ER 65, HL. As to mandatory orders (formerly termed 'orders of mandamus') see JUDICIAL REVIEW vol 61 (2010) PARAS 703 et seq.

9 Ie under the Administration of Justice Act 1960: see COURTS.

10 Supreme Court Act 1981 s 28A(4) (as added and substituted: see note 4 supra). See further COURTS.

11 Ie under the Children Act 1989 s 94 (as amended): see PARA 885 ante; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 304.

12 Ibid s 94(4). Where an order is made under s 94(4) the High Court may also make such incidental or consequential orders as appear to it to be just: s 94(5). Where an appeal from a magistrates' court relates to an order for the making of periodical payments, the High Court may order that its determination of the appeal is to have effect from such date as it thinks fit to specify in the order: s 94(6). The date so specified must not be earlier than the earliest date allowed in accordance with rules of court made for the purposes of s 94 (as amended): s 94(7). As to the High Court's powers where it reduces the amount of periodical payments or discharges the order for such payments see s 94(8); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 304. Any order of the High Court under s 94 (as amended) (other than one directing that an application be re-heard by a magistrates' court) is to be treated, for the purposes of the enforcement of the order and of any power to vary, revive or discharge orders, as if it were an order of the magistrates' court from which the appeal was brought and not an order of the High Court: s 94(9).

## UPDATE

### 772-897 Deferment of sentence ... Abandonment of appeal

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### 894 Powers of the High Court

NOTES 4-10--Supreme Court Act 1981 now cited as Senior Courts Act 1981:  
Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

TEXT AND NOTE 10--In 1981 Act s 28A(4) for 'House of Lords' read 'Supreme Court': 2005  
Act Sch 9 para 36(4) (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN  
MAGISTRATES' COURTS/(5) APPEALS FROM MAGISTRATES' COURTS/(iii) Appeal to the High  
Court/B. APPEALS BY WAY OF CASE STATED/(D) Costs and Enforcement/895. Orders as to  
costs.

## (D) COSTS AND ENFORCEMENT

### 895. Orders as to costs.

The High Court<sup>1</sup> may make such order as to costs as it thinks fit<sup>2</sup>, and in practice usually allows them to the successful party<sup>3</sup>. The costs given include the costs of preparing the case<sup>4</sup>, but not usually<sup>5</sup> those incurred by the hearing before the magistrates' court<sup>6</sup>. Application should be made immediately upon the determination of the case<sup>7</sup>.

A Divisional Court of the Queen's Bench Division also has power to order the payment out of central funds of the costs of any party to proceedings before the court in a criminal cause or matter<sup>8</sup>.

1 For the meaning of 'High Court' see PARA 513 note 8 ante.

2 Supreme Court Act 1981 s 51 (substituted by the Courts and Legal Services Act 1990 s 4(1)): see COURTS.

3 The court will in general give costs to a successful appellant (*Venables v Hardman* (1858) 28 LJM 33; *Davys v Douglas* (1859) 28 LJM 193; *Youdan v Crookes* (1858) 22 JP 287) and this is the case where the Crown is the unsuccessful party (*Moore v Smith* (1859) 1 E & E 597; and see *Walsh v R (Somerville)* (1888) 16 Cox CC 435). Costs have been refused to a successful appellant in exceptional circumstances, eg 'If the police want to get a decision on a point of principle they must get it at their own expense': *Saycell v Boo* [1948] 2 All ER 83 at 84, DC, per Lord Goddard CJ. Where the respondent was successful, costs have been refused in a case which was deemed fairly arguable: *Caswell v Cook* (1862) 12 CBNS 242. Where a conviction was quashed upon an objection not brought to the justices' notice, costs were refused: *Stinson v Browning* (1866) LR 1 CP 321; and see *London, Edinburgh and Glasgow Assurance Co Ltd v Partington* (1903) 67 JP 255. Where the respondent does not appear, the practice is not uniform, but in *Smith v Butler* (1885) 16 QBD 349 at 354, it was held by the court to be unusual to give costs in such circumstances. See also *Lee v Strain* (1859) 28 LJM 221, contra; *Wednesbury Local Board of Health v Stephenson* (1864) 33 LJM 111; *Halse v Alder* (1874) 38 JP 407; *Greenbank v Sanderson* (1884) 49 JP 40, DC; *Shepherd v Folland* (1884) 49 JP 165, DC; *Lee v Barton* (1909) 101 LT 600 at 603, note (a), DC; *Usk UDC v Mortimer* (1903) 68 JP 38, DC. Where, however, the court was of opinion that the respondent, although not appearing before it, had taken proceedings with a view to getting a point of law decided, costs were given against him: *Gordon v Cann* (1899) 68 LQB 434, DC; see also *Robinson v Gregory* (1905) as reported in 69 JP 161 at 162. As to costs where the justices appear see PARA 893 ante.

4 *Glover v Booth* (1862) 31 LJM 270. This includes the costs of preparing the case beyond the fees allowed to the justices' clerk under the Magistrates' Courts Act 1980 s 137, Sch 6 (as amended) (see PARA 771 ante): *Glover v Booth*.

5 In appropriate cases, the High Court may award costs to a successful appellant in respect of his appearance before justices: see *Turner & Son Ltd v Owen* [1956] 1 QB 48, [1955] 3 All ER 565, DC.

6 *Slaughter v Sunderland Corpn* (1891) 55 JP 519, DC.

7 *Budenberg v Roberts* (1867) LR 2 CP 292. See also *Caswell v Cook* (1862) 12 CBNS 242.

8 See the Prosecution of Offences Act 1985 s 16 (as amended), s 17; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2059.

## **UPDATE**

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### **895 Orders as to costs**

NOTE 2--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(5) APPEALS FROM MAGISTRATES' COURTS/(iii) Appeal to the High Court/B. APPEALS BY WAY OF CASE STATED/(D) Costs and Enforcement/896. Enforcement of judgment of the High Court.

### **896. Enforcement of judgment of the High Court.**

Any conviction, order, determination or other proceeding of the magistrates' court<sup>1</sup> which is varied by the High Court<sup>2</sup> on an appeal by case stated, and any judgment or order of the High Court on such an appeal, may be enforced as if it were a decision of the magistrates' court from which the appeal was brought<sup>3</sup>.

1 For the meaning of 'magistrates' court' see PARA 583 ante.

2 For the meaning of 'High Court' see PARA 513 note 8 ante.

3 Magistrates' Courts Act 1980 s 112.

## **UPDATE**

### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).

### **896 Enforcement of judgment of the High Court**

TEXT AND NOTES--Magistrates' Courts Act 1980 s 112 now s 112(1) (renumbered by SI 2009/871). Any order, determination or other proceeding of a magistrates' court varied by a county court on an appeal under the Magistrates' Courts Act 1980 s 111A (see PARA 885-888), and any judgment or order of a county court on such an appeal is also enforceable as if it were a decision of the magistrates' court from which the appeal was brought: s 112(2) (added by SI 2009/871).

Halsbury's Laws of England/MAGISTRATES (VOLUME 29(2) (REISSUE))/3. PROCEEDINGS IN MAGISTRATES' COURTS/(5) APPEALS FROM MAGISTRATES' COURTS/(iv) Abandonment of Appeal/897. Abandonment of appeal.

#### **(iv) Abandonment of Appeal**

##### **897. Abandonment of appeal.**

Where notice to abandon an appeal<sup>1</sup> has been duly given by the appellant: (1) the magistrates' court<sup>2</sup> against whose decision the appeal was brought may issue process for enforcing that decision, subject to anything already suffered or done under it by the appellant<sup>3</sup>; and (2) the magistrates' court may, on the application of the other party to the appeal, order the appellant to pay to that party such costs<sup>4</sup> as appear to the court to be just and reasonable in respect of expenses properly incurred by that party in connection with the appeal before notice of the abandonment was given to that party<sup>5</sup>. Where notice to abandon an appeal has been given by the appellant, any recognisance<sup>6</sup> conditioned for the appearance of the appellant at the hearing of the appeal has effect as if conditioned for the appearance of the appellant before the court from whose decision the appeal was brought at a time and place to be notified to the appellant by the justices' chief executive<sup>7</sup> for that court<sup>8</sup>.

1 For these purposes, 'appeal' means an appeal from a magistrates' court to the Crown Court: Magistrates' Courts Act 1980 s 109(2). For these purposes, the reference to a notice to abandon an appeal is a reference to a notice shown to the satisfaction of the magistrates' court to have been given in accordance with Crown Court rules: s 109(2). For the meaning of 'Crown Court' see PARA 508 note 9 ante. As to the Crown Court rules see COURTS.

2 For the meaning of 'magistrates' court' see PARA 583 ante.

3 Magistrates' Courts Act 1980 s 109(1)(a).

4 As to costs see PARA 767 et seq ante.

5 Magistrates' Courts Act 1980 s 109(1)(b).

6 As to recognisances see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 151 et seq.

7 As to the justices' chief executive see PARA 624 et seq ante.

#### **UPDATE**

#### **UPDATE**

#### **772-897 Deferment of sentence ... Abandonment of appeal**

SI 1981/552 replaced for the most part by the Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR') (see PARA 681-771).